

FINAL STATEMENT OF REASONS

Introduction:

A lawsuit was filed on March 3, 2000, by provider associations and licensees who wanted the California Department of Social Services (CDSS) to stop enforcing the Department's dementia regulations pertaining to residential care facilities for the elderly (RCFEs). After the court denied the first of their three claims, the Department proposed a forum to discuss dementia care issues, once the remaining two claims were settled. The rest of the lawsuit was therefore dismissed on February 5, 2001. The associations also sponsored Senate Bill (SB) 1113 (Haynes, 2000) which would have changed the standard for imposing physical plant requirements. The Governor's veto message for this legislation instructed CDSS to work closely with advocacy and provider groups in a review of current dementia regulations to ensure the careful balance of the competing public and personal issues. In the process of working with these groups, Assembly Bill (AB) 1753 (Romero), Chapter 434, Statutes of 2000 was chaptered. This legislation imposes certain requirements for licensees who advertise special care, programming, and/or environments for residents with dementia. Licensees are required to meet specified training requirements for direct care staff and to disclose to the licensing agency the specific features of the facility in its plan of operation and provide it to the public upon request.

CDSS' Community Care Licensing Division (CCLD) held dementia care policy forums on May 31, 2001 and September 18, 2001. The forums included a diverse group of participants representing family members and residents; client advocates; small single-facility providers; large multi-facility providers; legislative staff and medical professionals and researchers. Copies of the first draft of the dementia regulations were sent to the participants on February 28, 2002, for their comments. CCLD staff in the Adult and Senior Care Policy Section reviewed the comments received from the participants and made revisions to the draft regulations. The dementia care policy forum participants are referred to as "workgroup" in the Factual Basis of the statement of reasons.

CCLD staff also reviewed other states' assisted living regulations and a report written by Robert Mollica entitled State Assisted Living Policy: 2000, which is an analysis of various states' policies. The report was prepared under a grant (RRF Grant #99-307) from the Retirement Research Foundation in Chicago, Illinois.

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary Introduction:

Section 87101(d)(4)Specific Purpose:

The specific purpose of this amendment is to expand the definition of "dementia."

Factual Basis:

This amendment is necessary because the present definition for "dementia" does not give enough information to clearly explain what dementia is nor distinguish it from other health conditions. Health and Safety Code Sections 1569.15(m) and 1569.626 requirements for licensees of RCFEs who care for residents with dementia if the licensee advertises dementia special care, programming, and/or environments. The definition is provided in part by the workgroup and in part (page 30) by the National Academy for State Health Policy's State Assisted Living Policy: 2000, by Robert Mollica.

Section 87101(d)(7) (Post-Hearing Modification -- Renumbered to Section 87101(d)(8).)

Specific Purpose:

The specific purpose of adopting this section is to define "direct care staff."

Factual Basis:

This section is necessary because the term "direct care staff" is used throughout the RCFE regulations and has never been defined. Health and Safety Code Section 1569.626 uses the term and states that all RCFEs that advertise special care, programming, and/or environments for persons with dementia shall meet certain training requirements for all direct care staff.

Final Modification:

As a result of testimony, this definition is being amended for clarity by putting commas around "and/or those individuals employed by the licensee." The commas make it clearer that proposed language applies only to individuals employed by the licensee who provide direct care to the residents and/or licensees who provide direct care to the residents. The definition does not apply to firms, partnerships, corporations etc. that do not provide direct care. The intent is not to make every licensee subject to the definition; only those providing direct care to residents. In addition, an individual licensee can employ him/herself and that is why the definition specifies that "direct care staff" means the licensee and/or those individuals employed by the licensee. At the Department's discretion, the words "and/or direct assistance with services" are being deleted. It is not the intent to include individuals who transport individuals, cook, etc. to meet the training requirements that direct care staff must meet. Providing services does not necessarily mean that care is also being provided. Direct care staff provide the actual care and need to understand how dementia affects a resident in order to provide care and supervision to meet that resident's needs. This section has been renumbered from Section 87101(d)(7) to (d)(8) to be consistent with the amendments made by ORD #0902-23 (OAL File #03-0702-03E), effective 7/16/03, which adopted a new Section 87101(d)(7).

Sections 87101(d)(7) through (9) (Renumbered to Sections 87101(d)(8) through (10).)
(Post-Hearing Modification -- Renumbered to Sections 87101(d)(9) through (11).)

Specific Purpose/Factual Basis:

Sections 87101(d)(8) through (d)(10) are being renumbered from Sections 87101(d)(7) through (d)(9) for numerical consistency.

Final Modification:

Existing Sections 87101(d)(7) through (9) were renumbered to Sections 87101(d)(8) through (10) by ORD #0902-23 (OAL File #03-0702-03E), effective 7/16/03. Proposed renumbered Sections 87101(d)(8) through (d)(10) are being renumbered to Sections 87101(d)(9) through (d)(11) to be consistent with renumbering done in ORD #0902-23.

Sections 87101(m)(1) through (m)(1)(E) (Post-Hearing Modification -- Renumbered to Section 87101(m)(2).)

Specific Purpose:

The specific purpose of adopting these sections is to define "mild cognitive impairment." This condition is mentioned in Section 87724(a), where reference is made back to the definition section.

Factual Basis:

These sections are necessary because "mild cognitive impairment" is a condition not previously referred to in Title 22, Division 6, Chapter 8, Residential Care Facilities for the Elderly regulations. The new regulations in Section 87724(a) cross-reference this term to the definition's section. Licensees need to have knowledge of the term because Section 87724, Care of Persons with Dementia, specifically applies to residents diagnosed with dementia and does not apply to licensees who accept or retain residents with a diagnosis of mild cognitive impairment. This definition will allow a distinction to be made between dementia and mild cognitive impairment.

Final Modification:

As a result of testimony, this definition is being amended for clarification to indicate that "mild cognitive impairment" refers to people whose cognitive abilities are in a "conditional state" between normal aging and dementia. The amended definition is rewritten more broadly and Sections 87101(m) and (m)(1)(A) through (m)(1)(E) are deleted. The definition is a consensus of many experts including the Alzheimer Society, the Alzheimer's Disease Center, and Dr. Steven Ferris of the Silberstein Aging and Dementia Research Center. The Department has a definition for both "dementia" and "mild cognitive impairment" to help distinguish between these two terms. The definitions for "dementia" and "mild cognitive impairment" recognize the differences in level of functioning, which are needed to allow for different approaches to care and supervision. In addition,

regulations emphasize the need for ongoing assessments and continuous observation of those individuals with mild cognitive impairment because their condition could change. This section has been renumbered from Section 87101(m)(1) to (m)(2) to be consistent with the amendments made by ORD #0902-23 (OAL File #03-0702-03E), effective 7/16/03, which adopted a new Section 87101(m)(1).

Section 87111(a)

Specific Purpose:

The specific purpose of amending this section is to reorganize information and to include the Internet as an advertising option. The Health and Safety Code sections were reversed.

Factual Basis:

This section is necessary to clarify and include a now commonly used medium of advertising. The Health and Safety Code sections were reversed to be in the correct order for consistency with other citations.

Final Modification:

As a result of testimony, this section is being amended for clarity by adding the word "public" before advertisements and replacing "or correspondence" at the end of the sentence. This section is amended to require licensees to reveal each facility license number in all public advertisements, including Internet, or correspondence. The proposed amendment is being made to more closely resemble Health and Safety Code 1569.68 which specifies "All residential care facilities shall be required to include their current license number in any public advertisement or correspondence."

Section 87222(a)(6)

Specific Purpose/Factual Basis:

The specific purpose of this section is to correct a grammatical error. This amendment is necessary for clarity and ease of use.

Sections 87222(a)(7) through (a)(7)(C)

Specific Purpose:

The specific purpose of these sections is to clarify the requirements for a building sketch. Existing requirements in Section 87222(a)(7) were reorganized and separated into Sections 87222(a)(7) through (a)(7)(C).

Factual Basis:

These amendments are necessary to more clearly state the components of the required building sketch.

Final Modification:

At the Department's discretion, this section is being amended for clarity and to correct the previous amendments that changed the intent of the original regulation. Also, the language about a designation of the rooms to be used for nonambulatory residents belongs with the language that specifies that the plan shall contain a sketch of building(s) to be occupied, including a floor plan that describes the capacities of the buildings for the uses intended. Proposed language clarifies that two sketches are required and both must show dimensions. Proposed Sections 87222(a)(7)(A) and (B) are combined. Proposed Section 87222(a)(7)(C) is renumbered to Section 87222(a)(7)(B) for numerical consistency and amended to make a grammatical correction. The wording "a sketch of" is deleted because it is redundant since "sketches" is used in the lead-in sentence in Section 87222(a)(7).

Section 87222(b)

Specific Purpose:

The specific purpose of adopting this section is to add reference to additional information required in the plan of operation under specific conditions as specified in Section 87725(a)(3).

Factual Basis:

This section is necessary to add a cross-reference to new requirements specified in Section 87725(a)(3) for clarity and ease of use.

Final Modification:

This section is being amended to reflect the proposed renumbering of the cross-reference from Section 87725(a)(3) to Section 87725(a)(2).

Section 87222(c)

Specific Purpose:

The specific purpose of adopting this section is to require a licensee who accepts or retains residents diagnosed by a physician to have dementia, and/or determined by a physician to be nonambulatory as a result of mental confusion, to include additional information in the plan of operation as specified in Section 87724(b).

Factual Basis:

This section is necessary to add a cross-reference to new requirements specified in Section 87724(b) for clarity and ease of use.

Final Modification:

As a result of testimony, this section is being amended to delete "and/or determined by a physician to be nonambulatory as a result of mental confusion." The removal of this language is consistent with the removal of similar language in proposed Section 87724(a), pertaining to the care of persons with dementia. A person who is nonambulatory as a result of mental confusion does not necessarily have dementia.

Sections 87565(c), (c)(3)(C), and (c)(5) (Post-Hearing Modification)

Specific Purpose:

Sections 87565(c) and (c)(3)(C) are being amended to remove the numbers in parentheses for consistency with other sections. Section 87565(c)(3)(C) is further amended to remove subsection (8) in the reference to the definition Section 87101(s), pertaining to "substantial compliance." Section 87565(c)(5) is amended to remove current regulatory language that specifies that "documentation of the training shall be retained in the employee's file. For classroom courses, documentation shall consist of notices of course completion signed by the trainer." In addition, language is being proposed that states that the licensee shall maintain documentation pertaining to staff training in the personnel records, as specified in Section 87566(c)(2).

Factual Basis:

Sections 87565(c) and (c)(3)(C) are being amended to remove the numbers in parentheses for consistency with other sections. The amendment to the cross-reference in Section 87565(c)(3)(C) is necessary to be consistent with current Department policy regarding cross-references of Section 87101, Definitions. The reference to the specific number within the definition's alphabetical listing is being eliminated to avoid the ongoing need to revise cross-references every time a new definition is added.

Deleting language in Section 87565(c)(5) is necessary because it duplicates proposed Section 87566(c) pertaining to personnel records. The regulation language that specifies that documentation for classroom courses shall consist of notices of course completion signed by the trainer is being deleted. Similar language is being added in Section 87566(c)(2)(D)1., along with additional requirements.

The new language being proposed at Section 87565(c)(5) is necessary to provide a cross-reference to the language that is being moved from Section 87565(c)(5) to Section 87566(c)(2), pertaining to personnel records.

Section 87565(f)

Specific Purpose:

The specific purpose of adopting this section is to cross-reference additional information regarding personnel training required under certain conditions, as specified in Section 87724(c)(3).

Factual Basis:

This section is necessary to add a cross-reference for clarity and ease of use.

Final Modification:

At the Department's discretion, Section 87565(f) is being deleted because it does not belong in Section 87565, Personnel Requirements – General. That section gives general requirements for staff that assist residents with personal activities of daily living and requires on-the-job training for personnel. Section 87565(f) is not specific to all personnel, but only pertains to staff that provide direct care to residents with dementia. Since these requirements are specific to staff caring for residents with dementia, the training requirements pertaining to those staff should be stated in Section 87724(c)(3).

Section 87565(g)

Specific Purpose:

The specific purpose of adopting this section is to cross-reference additional training required under certain conditions as specified in Section 87725.1, Training Requirements if Advertising Dementia Special Care, Programming, and/or Environments.

Factual Basis:

This section is necessary to cross-reference new training requirements for clarity and ease of use.

Final Modification:

At the Department's discretion, Section 87565(g) is being deleted because it does not belong in Section 87565, Personnel Requirements – General. That section gives general requirements for staff that assist residents with personal activities of daily living and requires on-the job training for personnel. Section 87565(g) is not specific to all personnel, but only pertains to direct care staff that provide care to residents with dementia in a facility in which the licensee advertises or promotes dementia special care, programming, and/or environments. Since these requirements are specific only to these individuals and not to all staff, the training requirements pertaining to those staff should be stated in Section 87725.1, specific to the training requirements if the licensee is advertising dementia special care, programming, and/or environments.

Sections 87565(h) through (l) (Renumbered from Sections 87565(f) through (j).) [Post-Hearing Modification -- Renumbering not done.]

Specific Purpose/Factual Basis:

The specific purpose of these sections is to renumber Sections 87565(f) through (j) to Sections 87565(h) through (l) for numerical consistency.

Final Modification:

The proposed renumbering is no longer necessary due to the deletion of Sections 87565(f) and (g).

Section 87566(a)

Specific Purpose:

The specific purpose of this amendment is to remove language that specifies that employment application forms "shall be available to the Department or licensing agency for review." The wording "on each employee" is reworded to "for each employee" and this wording has been relocated. The word "and" is removed. The language "in the personnel records" is added.

Factual Basis:

This section is necessary to remove the language that specifies employment application forms shall be available to the Department or licensing agency for review because this former language should apply to all personnel records, not just the employment application form. Therefore, Section 87566(h) is added to apply to all personnel records and it provides additional clarity. The entire Section 87566 is about Personnel Records and different records are described. Language is reworded and relocated for clarity. The word "and" is removed because it is no longer necessary. The language "in the personnel records" is added for clarity.

Final Modification:

This section was amended by ORD #0902-23 (OAL File #03-0702-03E), effective 7/16/03. The proposed amendments in this filing were not needed in light of the changes made by ORD #0902-23. The proposed language was not specific to dementia so, at the Department's discretion, the proposed amendment is being deleted. In addition to ORD #0902-23, an upcoming regulation package on records removal and reproduction has additional language for this section.

Section 87566(b) (Post-Hearing Modification -- Renumbered to Section 87566(c).)

Specific Purpose:

The specific purpose of adopting this section is to require licensees to maintain specific details of required staff training in the personnel records.

Factual Basis:

This section is necessary to ensure that a record of mandatory training is maintained. This recorded information is essential to provide the licensing agency with verification that staff have completed training as required.

Final Modification:

A new Section 87566(b) was added by ORD #0902-23 (OAL File #03-0702-03E), effective 7/16/03. The proposed Section 87566(b) in this filing is renumbered to Section 87566(c) to accommodate the addition of the new Section 87566(b).

Renumbered Section 87566(c) is being further amended to break out specific requirements and to make grammatical changes. The proposed post-hearing amendment lists the staff training and orientation that must be documented and breaks out separately the information required to be documented. These amendments are necessary for clarity.

A new Section 87566(c)(1) is being added that specifies what staff training and orientation must be documented. Section 87566(c)(1)(A) is being renumbered from proposed Section 87566(d) and is being further amended to eliminate the word "RCFE" because this chapter pertains to RCFEs. This section is also amended to specify "four hours of training annually thereafter" instead of "four hours of annual continuing education." Reference to "continuing education" can be confusing since there are now continuing education requirements to meet the administrator recertification requirements. This section is further amended to remove the numbers in parentheses for consistency with other sections. New Sections 87566(c)(1)(B) and (c)(1)(B)1. are being added to include new documentation requirements for training of staff who provide direct care to residents with dementia in a facility in which the licensee advertises dementia special care programming, and/or environments and contains language that was originally proposed as Section 87565(g). Section 87566(c)(1)(B)2. is being added to provide a cross-reference to Section 87725.1(a)(1)(D) to ensure the documentation requirements for orientation are included in the personnel records. This section is necessary to add a cross-reference for clarity.

A new Section 87566(c)(2), originally part of proposed Section 87566(b), is being added for clarity to break out the required documentation on staff training that the licensee shall maintain in the personnel records. The Department is adding the word "full" to clarify that the trainer's "full" name must be documented, to ensure better identification to cross-check records on the trainer, if needed. The trainer's qualifications and contact information is being eliminated because that would be duplicative of information already in the file on the trainer. Documentation includes the subjects covered in the training, date(s) of attendance

(instead of date(s) attended), and the number of training hours per subject (instead of number of hours). The changes are being made for clarification or are grammatical changes. Additional clarifying language is provided. The Department is also adding Sections 87566(c)(2)(D)1. through 3. to further clarify the necessary documentation for the number of training hours per subject based on the source of the training. If the training is provided by a trainer in a classroom setting, documentation shall consist of notices of course completion signed by the trainer. If the educational hours/units are obtained through an accredited educational institution, documentation shall include a copy of a transcript or official grade slip showing a passing mark. If the educational hours/units are obtained through continuing education, documentation shall include a transcript or official grade slip showing a passing mark, if applicable, or a Certificate of Completion.

Section 87566(b)(1)

Specific Purpose:

The specific purpose of adopting this section is to require licensees to be responsible for ensuring that the personnel record includes verification of the training specified in Section 87724(c)(3) if the licensee is caring for residents with dementia and Section 87725.1 (if applicable) if the licensee is advertising dementia special care, programming, and/or environments. The title of Section 87725.1 is added.

Factual Basis:

This section is necessary to clearly state that the licensee is responsible for ensuring that the personnel records include verification of the training specified in Section 87724(c)(3) if the licensee is caring for residents with dementia, and if applicable, Section 87725.1 if the licensee is advertising dementia special care, programming, and/or environments. This information is necessary so that the licensing agency, during a facility visit, can verify that the training requirements have been met. The title of Section 87725.1 is added for clarity.

Final Modification:

At the Department's discretion, this section is being deleted; the language is amended and added in proposed new Section 87566(c)(1)(B).

Sections 87566(c) through (g) (Renumbered from Sections 87566(b) through (f).) (Post-Hearing Modification -- Renumbered to Sections 87566(a)(11), (c)(1)(A), (d), (g), and (e).)

Specific Purpose/Factual Basis:

The specific purpose of these sections is to renumber Sections 87566(b) through (f) to Sections 87566(c) through (g) for numerical consistency.

Final Modification:

A new Section 87566(b) was added and renumbering was done to the existing subsections in ORD #0902-23 (OAL File #03-0702-03E), effective 7/16/03; therefore, the proposed renumbering of renumbered Sections 87566(c) and (e) are no longer necessary. Proposed renumbered Sections 87566(f) and (g) are being renumbered to Sections 87566(c)(1)(A) and (g). The renumbering is for clarity to accommodate the new addition and the restructuring of the rest of the section.

Section 87566(d) (Post-Hearing Modification)

Specific Purpose:

This section is being amended to add language that the licensee shall maintain documentation that an administrator has met the recertification requirements in Section 87564.3.

Factual Basis:

This amendment is necessary for clarity. Initially, an administrator may only meet the certification requirements specified in Section 87564.2, which are required prior to being employed as an administrator. However, administrators must also complete at least 40 classroom hours of continuing education during each two year certification period, pursuant to Health and Safety Code Section 1569.616(f)(1).

Section 87566(h) (Post-Hearing Modification -- Renumbered to Section 87566(f)(2).)

Specific Purpose:

The specific purpose of this section is to specify that the licensing agency shall be entitled to inspect, audit, remove if necessary, and copy the personnel records upon demand during normal business hours.

Factual Basis:

This section is necessary to clarify the licensing agency's access to personnel records necessary to carry out the functions of the licensing program. This language is consistent with Section 87570(e) pertaining to resident records. The proposed language provides clarity.

Final Modification:

A new Section 87566(f) was added by ORD #0902-23 (OAL File #03-0702-03E), effective 7/16/03. Proposed Section 87566(h) is being renumbered to Section 87566(f)(2) for a more appropriate location within the context of this section.

Section 87569(b)(5)

Specific Purpose:

The specific purpose of this section is to differentiate on the medical assessment between a non-ambulatory status due to a physical condition, a non-ambulatory status due to a mental condition or a non-ambulatory status due to both. The word "by" is changed to "in." Also, the cross-reference to Section 87101a.(4) is corrected to Section 87101(a)(6).

Factual Basis:

This section is necessary to clarify that the medical assessment shall indicate the source of the non-ambulatory status for the Department to determine if the physical plant can accommodate the resident. This information will also be used to determine what procedures should be in place to protect the resident's health and safety. The word "by" is changed to "in" for consistency. The cross-reference is corrected for clarity.

Final Modification:

At the Department's discretion, Section 87569(b)(5) is being amended to remove "(6)" from the cross-reference to the definition at Section 87101(a)(6), pertaining to "ambulatory person." This amendment is necessary to be consistent with current Department policy regarding cross-references of Section 87101, Definitions. The reference to the specific number within the definition's alphabetical listing is being eliminated to avoid the ongoing need to revise cross-references every time a new definition is added. This section is also being amended to add "nonambulatory," and a cross-reference to its definition for clarity. This section is further amended to allow for this addition and for consistency and for grammatical changes.

Section 87570(b)(6)

Specific Purpose/Factual Basis:

The specific purpose of this section is to correct a cross-reference. This section is necessary for clarity.

Final Modification:

At the Department's discretion Section 87570(b)(6) is being amended to remove "(5)" from the cross-reference to the definition at Section 87101(r)(5), pertaining to "responsible person." This amendment is necessary to be consistent with current Department policy regarding cross-references of Section 87101, Definitions. The reference to the specific number within the definition's alphabetical listing is being eliminated to avoid the ongoing need to revise cross-references every time a new definition is added.

Sections 87570(b)(15) through (b)(15)(F)

Specific Purpose:

The specific purpose of adopting these sections is to relocate Section 87724(a)(6) which requires documents and information required in Section 87583, Pre-Admission Appraisal – General; Section 87584, Functional Capabilities; Section 87585, Mental Condition; Section 87586, Social Factors; Section 87587, Reappraisals; and Section 87588, Documentation and Support.

Factual Basis:

These sections are necessary to include specific required assessment information to be maintained as part of the resident's record for consistency and availability for review by the Department in a more appropriate location. This regulation was relocated from Section 87724(b)(6) to be more appropriately placed under resident records.

Section 87582(b) (Post-Hearing Modification)

Specific Purpose:

The section is amended to delete the language "received into" and use the word "accepted" and to replace the word "by" with "in." Also, "Residential Care Facility for the Elderly" is being deleted.

Factual Basis:

These amendments are necessary to be more consistent with the language used throughout the RCFE regulations pertaining to acceptance and retention. Some form of the words acceptance and/or retention is used in Sections 87567, 87569, 87582, 87593, 87700, 87702 – 87711, 87713, 87716, and 87724 in the current RCFE regulations. The word "accepted" is more accurate since Section 87582 is titled, "Acceptance and Retention Limitations." The word "in" is more grammatically correct than the word "by" and "residential care facility for the elderly" is being deleted as unnecessary since this chapter applies only to those facilities.

Section 87582(b)(4)

Specific Purpose:

The specific purpose of this section is to allow persons with varying degrees of dementia to be received into or retained by an RCFE.

Factual Basis:

A work group consisting of resident advocates, provider groups and interested parties convened twice to assist the Department in re-writing regulations for licensees who accept

and/or retain residents with dementia. This section is amended for clarity and to allow for persons with other than mild problems to be accepted and retained in an RCFE.

Section 87582(c) (Post-Hearing Modification)

Specific Purpose:

This section is amended to relocate the lead-in phrase "except as otherwise provided in Section 87582(f)," which only applies to renumbered Section 87582(c)(4), and to make a necessary grammatical change. This section is being further amended to replace the word "admitted" with "accepted." In addition the phrase "in a residential care facility for the elderly" is being deleted.

Factual Basis:

The amendment to deleted the lead-in sentence in Section 87582(c) is necessary because this language only pertains to renumbered Section 87582(c)(4), where this language is being relocated. Section 87582(f) refers to a bedridden resident being retained in an RCFE in excess of 14 days. In addition, a grammatical change is being made to capitalize "n" in the word "no." The word "admitted" is replaced with "accepted" to be more consistent with the language used throughout the RCFE regulations pertaining to acceptance and retention. The word "accepted" is more accurate than the word "admitted" since Section 87582 is titled, "Acceptance and Retention Limitations." See the Factual Basis for Section 87582(b). The phrase "in a residential care facility for the elderly" is being deleted as unnecessary since this chapter applies only to those facilities.

Section 87582(c)(3)

Specific Purpose:

The specific purpose of this amendment is to repeal the prohibition against accepting a resident who requires more care and supervision than other residents in care, and to make a grammatical correction.

Factual Basis:

This amendment is necessary for clarity. Residents frequently have varying requirements for care and supervision. The licensee is required to provide care and supervision based on individual need for service. The grammatical correction is being made for clarity.

Final Modification:

At the Department's discretion, this section is being deleted because it is unnecessary and repetitive of current language in Section 87582(b)(6).

Sections 87582(c)(4) through (c)(6) (Post-Hearing Modification – Renumbered to Sections 87582(c)(3) and (4))

Specific Purpose:

The specific purpose of these sections is to make grammatical changes and to clarify that ongoing behavior that would upset the general resident group, and not dementia or a mental disorder, can prohibit acceptance and/or retention. The prohibition against accepting or retaining a resident who would require a greater amount of care and supervision than other residents in the facility is repealed. The phrase "The resident" is added. Previous Section 87582(c)(4) is split into two sections. Section 87582(c)(5) is renumbered to Section 87582(c)(6). The word "which" is changed to "that."

Factual Basis:

These amendments are necessary to clearly state the intent of the regulations. Residents frequently have varying requirements for care and supervision. The licensee is required to provide care and supervision based on a resident's individual need for service. Ongoing behavior that upsets the general resident group and may prohibit a resident from being accepted and/or retained is not necessarily due to dementia or a mental condition. Section 87582(c)(4) is split into Sections 87582(c)(4) and (c)(5) for clarity and ease of use. Section 87582(c)(5) is renumbered to Section 87582(c)(6) for numerical consistency. "The resident" is added for clarity and a grammatical change of "which" to "that" is made.

Final Modification:

As a result of testimony, Section 87582(c)(4) is being renumbered to Section 87582(c)(3) because the existing Section 87582(c)(3) is being deleted. Renumbered Section 87582(c)(3) is being further amended for clarification, as a result of testimony, and to meet the intent of the regulations. The phrase "dementia or a mental disorder" was mistakenly omitted. Language in renumbered Section 87582(c)(3) is being broken out into Sections 87582(c)(3) and (c)(3)(A) and (B) for clarity. Section 87582(c)(3)(A) addresses an ongoing behavior, caused by a mental disorder, that would upset the general resident group. Section 87582(c)(3)(B) adds back in dementia and explains that a person shall be accepted or retained if he/she meets the requirements of Section 87724, Care of Persons with Dementia. This section is further amended grammatically to allow for this reformatting. A new Section 87582(c)(3)(B) is being added to replace the language about dementia because this section applies to all RCFEs, but not all RCFEs care for residents with dementia. A facility must meet the requirements in Section 87724 to care for residents with dementia. In addition this language is consistent with Sections 87724(k)(9) and (l)(7).

As a result of testimony, Section 87582(c)(5) is being deleted. RCFEs may provide certain kinds of specialized care, such as dementia or hospice care, but typically do not have special programs that are often found in other licensing categories. It is relatively common and certainly unobjectionable for a resident to have no need for many facility services. As the regulation carries no specific meaning to RCFEs, the Department has decided to delete this section.

Section 87582(c)(6) is being renumbered to Section 87582(c)(4) for numerical consistency since Sections 87582(c)(3) and (c)(5) are being deleted. This section is being further amended to relocate the language that was in Section 87582(c) to this section, which is the only section to which it applies and to add a comma for grammatical accuracy.

Section 87591

Specific Purpose:

The specific purpose of this amendment is to specify that there is both a mental and a physical component to health conditions. The regulation is reworded to make it clear that the licensee shall "ensure that residents are" regularly observed rather than making it sound like the licensee is the only one observing the residents. For this same reason, the wording "the licensee shall provide" is removed and replaced with appropriate assistance "is provided." The requirement for documentation and bringing changes to the attention of the physician is reworded so that the licensee is not the only one required to do this. The wording "which might require a change in the existing level of service, or possible discharge, or transfer to another type of facility" is removed.

Factual Basis:

These amendments are necessary because the licensee is responsible for ensuring that the needs of the resident are met. However, the licensee may direct others in the facility, such as direct care staff, to observe residents, provide appropriate assistance, and document changes and bring these changes to the attention of the resident's physician and the resident's responsible person, if any. Direct care staff are required to have had the appropriate training to regularly observe residents for changes. "Health condition" is further defined to include conditions of a cognitive and/or physical nature. The wording "which might require a change in the existing level of service, or possible discharge, or transfer to another type of facility" is removed because it goes beyond observing the resident, which is the subject matter of Section 87591. This information is covered in other sections and is not relevant here.

Final Modification:

As a result of testimony to similar language in proposed Section 87724(c)(1), the Department is substituting the word "cognitive" ability to "mental" ability. The word "mental" is a word that the general public can understand. This word is consistent with other wording in the RCFE regulations. The term "mentally and physically capable" is used throughout regulations, as shown in Sections 87703, 87704, 87705, and 87707.

Section 87593(d)(6)

Specific Purpose:

The specific purpose of this amendment is to specify that the licensee shall not accept an individual as an emergency placement from Adult Protective Services whose primary need for care and supervision results from ongoing behavior that would upset the general resident group or who cannot generally benefit from the program of services available in the facility. Wording is eliminated that referenced dementia or a mental disorder as being the primary need for care and supervision. A new section number is provided for the new proposed language in that section. Language is eliminated in Section 87593(e) that referenced the dementia waiver.

Factual Basis:

This amendment is necessary to be consistent with the amendments proposed in Sections 87582(c)(4) and 87582(c)(5), which were originally together under one section number. Ongoing behavior that upsets the general resident group and may prohibit a resident from being accepted and/or retained in a facility is not necessarily due to dementia or a mental disorder. Exception language is eliminated because the Department is removing the dementia waiver in Section 87724(c) in this regulation package.

Final Modification:

As a result of testimony and for consistency throughout the regulations, the word "an" is being added before "ongoing behavior" and the language "caused by a mental disorder" is being added back in to describe the ongoing behavior. Commas are being added to make the sentence structure grammatically correct. Originally, language was added to Section 87593 to be consistent with the changes proposed in Sections 87582(c)(4) and (5). The language in the Section 87582(c)(4), which is being renumbered to Section 87582(c)(3), is being changed as a result of testimony and is explained in the Final Modification to Section 87582(c)(4), so similar language and specific cross-reference are being added to Section 87593(d)(6). The new proposed language in renumbered Section 87582(c)(3)(B) concerning dementia is not necessary in this section because similar language is already in Section 87593(e). In addition, the Department is removing language in Section 87593(d)(6) that said "or who cannot generally benefit from the program of services available in the facility [Section 87582(c)(5)]" for the reasons indicated in the Final Modification to Section 87582(c)(5). As a result of testimony, Section 87582(c)(5) is being deleted, and for consistency, this language must also be deleted in Section 87593(d)(6).

Sections 87593(e) and (e)(1)

Specific Purpose:

The specific purpose of these amendments is to change the word "must" to "shall" and to add the title following Section 87724. The wording "and ensure the following criterion is met, including but not limited to the following" is changed to "that include, but are not

limited to, the following." Language is added that specifies that the facility has a nonambulatory fire clearance for each room that will be used to accommodate a resident with dementia who is nonambulatory. The wording "are considered" is replaced by "is." A reference is provided to show where to find information in the regulations on a nonambulatory fire clearance. Language is removed that describes nonambulatory. Language pertaining to a dementia waiver is deleted.

Factual Basis:

These amendments are necessary to be consistent with the proposed language in Section 87724(c)(1), removing the requirement for a dementia waiver. For additional clarity and for the health and safety of the residents, Section 87593(e)(1) provides language on a nonambulatory fire clearance. Health and Safety Code Section 1569.71 specifies that the Department must uphold regulations for nonambulatory persons that ensure resident safety, but must also provide flexibility to allow residents to remain in the least restrictive environment. Reference is made to Section 87724(c)(1) so that all the language in that section did not have to be repeated. Language is deleted that describes nonambulatory because it is no longer accurate or consistent with the proposed language described in Section 87724(c)(1). In addition, the word "must" is changed to "shall" to be consistent with the other regulations in Title 22, Division 6, Chapter 8. The title of Section 87724 is added for clarity. Grammatical changes are made for clarity.

Final Modification:

The phrase "including, but not limited to, the following:" that was proposed for amendment to "that include, but are not limited to, the following:" was erroneously included because the phrase is not in existing language. Also, since Section 87593(e)(1) is being deleted, the proposed amendment in this section is no longer necessary and is therefore being deleted.

Section 87593(e)(1) is being deleted. This section required licensees, who accepted or retained residents who were "nonambulatory" due to their mental inability to respond to emergency situations, to obtain approval from the licensing agency to care for these individuals through a dementia waiver. The requirement for a dementia waiver is being deleted from Section 87724(b) and therefore this section is unnecessary.

Section 87724(a)

Specific Purpose:

Existing Section 87724(a) is being renumbered to Section 87724(c). A new Section 87724(a) is being adopted to clarify that this section pertains only to licensees who accept or retain residents diagnosed by a physician to have dementia and/or the residents are determined by a physician to be nonambulatory as a result of mental confusion. This section does not apply to licensees who accept or retain residents with a diagnosis of mild cognitive impairment. A cross-reference is provided.

Factual Basis:

This section is necessary to clarify that licensees who accept and/or retain residents, under specific conditions, must comply with the requirements of Section 87724. Also, this section exempts from these requirements, residents with a diagnosis of mild cognitive impairment, which is defined in Section 87101(m)(1). The cross-reference is provided for ease of use.

Final Modification:

The Department is removing language in Section 87724(a) pertaining to a determination by a physician that a resident is nonambulatory as a result of mental confusion to be consistent with the removal of this language in Section 87222(c). At the Department's discretion, this section is being amended to remove "(1)" from the cross-reference to the definition at Section 87101(m)(1), pertaining to "mild cognitive impairment." This amendment is necessary to be consistent with current Department policy regarding cross-references of Section 87101, Definitions. The reference to the specific number within the definition's alphabetical listing is being eliminated to avoid the ongoing need to revise cross-references every time a new definition is added. In addition, as a result of testimony to Section 87101(m)(1) and Section 87724(a), clarifying language is being added to the end of Section 87724(a) that specifies the licensee shall meet the requirements specified in Section 87591, Observation of the Resident, and Section 87587, Reappraisals. The new language emphasizes the need for ongoing reappraisals and continuous observation of those individuals with mild cognitive impairment because their condition could change, and the physician may then determine an individual has dementia; then the regulations for Section 87724 would apply.

Section 87724(a)(5)(G) (Repealed)

Specific Purpose/Factual Basis:

Section 87724(a)(5)(G) is repealed. This requirement is already addressed in Section 87691(a) and is therefore duplicative.

Section 87724(a)(6) (Repealed)

Specific Purpose/Factual Basis:

This section is being relocated to Section 87570(b)(15). The requirements in this section apply to all residents in RCFEs and are more appropriately placed under Section 87570, Resident Records. The requirement that documents and information in Sections 87569 and 87570 be on file at the facility are unnecessary because Section 87570(b)(8) specifies the inclusion of Section 87569 and including Section 87570 would be redundant.

Existing Section 87724(b) (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal the statement that the licensee does not need the Department's approval to accept or retain a resident with dementia who is determined to be ambulatory.

Factual Basis:

This repeal is necessary because the Department is removing the requirement for a dementia waiver. Certain requests for waivers and/or exceptions are commonly requested by licensees and granted by CDSS on a pro-forma basis as they have not been found to negatively affect the health and/or safety of residents. This waiver/exception process utilizes the limited time and resources of the Department. Given the seriousness of the current State budget deficit, the Department has determined that placing the conditions of these commonly granted waivers and exceptions into regulation will maintain the current licensing standards for the well being of residents in RCFEs and in turn, eliminate the need for licensees and Department staff to process the unnecessary paperwork and will allow the remaining staff to concentrate on overseeing the health and safety of residents.

Section 87724(b) (Renumbered from Section 87724(a)(3).)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to reorganize information. Section 87222 contains the requirement for the facility to have a written plan of operation; language in this section that restates that requirement is unnecessary and therefore removed. Section 87724(a)(3) is renumbered to Section 87724(b). These amendments are necessary for clarification and ease of use.

Final Modification:

A comma is being added after "dementia" for clarity and to be grammatically correct.

Section 87724(b)(1) (Renumbered from Section 87724(c)(1)(F).)

Specific Purpose:

The specific purpose of this amendment is a grammatical change, and to expand the notification requirement to include responsible persons. Section 87724(b)(1) is renumbered from Section (c)(1)(F).

Factual Basis:

This amendment is necessary for clarity and consistency. The work group proposed that responsible persons who are non-family members should be notified of a change in a resident's condition when such notification has been requested.

Section 87724(b)(2)

Specific Purpose:

The specific purpose of adopting this section is to require that safety measures to address health and safety risks commonly associated with dementia are included in the plan of operation.

Factual Basis:

This section is necessary to ensure the health and safety of residents with dementia. Wandering, aggressive behavior, and ingestion of toxic material were identified by the work group as areas of great concern.

Sections 87724(c) through (c)(1)(C), (c)(1)(E) and (c)(1)(H) (Repealed)

Specific Purpose:

The specific purpose of these sections is to repeal the requirement for the licensee to obtain the Department's approval prior to accepting or retaining a resident with dementia who is determined to be non-ambulatory and to repeal the description of the documentation necessary to obtain the waiver.

Factual Basis:

These repeals are necessary because the Department is eliminating the dementia waiver requirement. (See Factual Basis for repeal of existing Section 87724(b).) Sections 87724(c)(1)(D), (c)(1)(F), and (c)(1)(G) are moved to other locations in Section 87724 because they are necessary components for care of persons with dementia.

Section 87724(c) (Renumbered from Section 87724(a).)

Specific Purpose/Factual Basis:

The specific purpose of this section is a grammatical change to more clearly state the responsibility of the licensee who accepts and retains residents with dementia. Section 87724(a) is renumbered to Section 87724(c) for clarity and ease of use.

Section 87724(c)(1) (Renumbered from Section 87724(a)(2).)

Specific Purpose:

The specific purpose of this section is to more clearly state when it is necessary that a resident with dementia must have a room with a nonambulatory fire clearance. The word "which" was changed to "that" and unnecessary information is repealed.

Factual Basis:

This amendment is necessary for clarity and ease of use. Section 87724(c)(1) is renumbered from Section 87724(a)(2) for numerical consistency. A grammatical change is made and unnecessary wording is repealed. The cross-reference to Section 87220 is repealed because it is not necessary to get the meaning across. Instead of cross-referencing Section 87101n.(2) and the Health and Safety Code, existing language is incorporated that specifically applies to residents with dementia.

Final Modification:

As a result of testimony, the word "cognitively" is being deleted and substituted by the word "mentally" as the term "mentally and physically capable" is used throughout regulations, as shown in Sections 87703, 87704, 87705, and 87707. This section is further amended to correct a grammatical error.

Section 87724(c)(2) (Renumbered from Section 87724(a)(7).)

Specific Purpose/Factual Basis:

The specific purpose of this section is to remove the language "Ensuring the development of a." The requirement to develop a disaster and mass casualty plan is addressed in Section 87223. Information is reorganized for clarity and ease of use. Section 87724(a)(7) is renumbered to Section 87724(c)(2) for clarity.

Final Modification:

Commas are being added for clarity and grammatical consistency to separate out the language "as required in Section 87223."

Section 87724(c)(3) (Renumbered from Section 87724(a)(4).)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to reorganize the information and to change the term "facility staff" to "direct care staff" for clarity and ease of use. The term "facility staff" is replaced with "direct care" staff because direct care staff is defined as staff directly responsible for providing resident care. Section 87724(a)(4) is renumbered in part to Section 87724(c)(3) for clarity and consistency. The language "shall be" is proposed for

consistency with the language of other regulations. Section 87565(d) (formerly Section 87565(c)) is referred to because it explains what on-the-job training encompasses. The areas of training under this Section 87724(c)(3) are different, however.

Final Modification:

At the Department's discretion, the language is being deleted because it was unclear, and new language is being added. The training in Section 87724(c)(3) only pertains to direct care staff providing care to residents with dementia and is in addition to the training in Section 87565(d), which is for all staff. The language "on-the-job" training is being added for clarity and the language that the training must be appropriate for the job assigned and as evidenced by safe and effective job performance is consistent with similar language in Section 87565(d).

Section 87724(c)(3)(A) (Renumbered from Section 87724(a)(4).)

Specific Purpose:

The specific purpose of this amendment is to remove the reference to training in identifying and reporting resident abuse and neglect and to require training in hydration and skin care. Section 87724(a)(4) is renumbered in part to Section 87724(c)(3)(A).

Factual Basis:

This amendment is necessary because identifying and reporting resident abuse and neglect is not specific to dementia care and is duplicative of Section 87561(a)(1)(D). The work group identified hydration and skin care as important areas staff should be trained in. Renumeration is for consistency and ease of use.

Final Modification:

As a result of testimony, training is being expanded to include more areas that may be specific to residents with dementia. Dementia care should include more than meeting a resident's hydration and skin care needs; other conditions/problems should be emphasized as well. Amended language specifies that dementia care includes, but is not limited to, knowledge about hydration, skin care, communication, therapeutic activities, behavioral challenges, the environment, and assisting with activities of daily living.

Section 87724(c)(3)(B) (Renumbered from Section 87724(a)(4).)

Specific Purpose:

The specific purpose of adopting this section is to expand required training topics to include the recognition of signs and symptoms related to dementia.

Factual Basis:

This section is necessary to ensure that direct care staff are aware of functional aspects related to dementia so that they are better able to protect residents' health and safety and can become aware of what to look for as the dementia progresses.

Final Modification:

As a result of testimony, training is being expanded to include more areas that may be specific to residents with dementia. Added language specifies training shall include recognizing symptoms that may create or aggravate dementia behaviors, including, but not limited to, dehydration, urinary tract infections, and problems with swallowing. The phrase "recognizing signs and symptoms related to dementia" is amended to delete language that is redundant since Section 87565(c)(2)(F) requires all RCFE staff who assist residents with personal activities of daily living to receive training on recognizing signs and symptoms of dementia in individuals.

Section 87724(c)(3)(C) (Renumbered from Section 87724(a)(4).)

Specific Purpose/Factual Basis:

The specific purpose of this section is to change the language of one of the training components from "behavioral effects of medications on residents with dementia" to "effects of medications commonly used for dementia." The revised subject matter is more general than having a focus on behavioral effects of medications. Section 87725.1(a)(2)(A)1. requires training topics to be more specific since these topics are required for direct care staff who work in facilities where the licensee is advertising dementia special care. Information is reorganized for clarity and ease of use. Section 87724(a)(4) is renumbered in part to Section 87724(c)(3)(C) for consistency.

Final Modification:

As a result of testimony, this section is being amended for clarity. Amended language now specifies that staff shall receive training in recognizing the effects of medications commonly used to treat the symptoms of dementia instead of training on the effects of medications commonly used for dementia. The issue regarding effects of medication is not simply those commonly used for dementia, such as Aricept, but also those medications prescribed for other symptoms experienced by people with dementia, such as anti-depressants or anti-psychotics. It is important for direct care staff to be aware of the side effects of any of these medications which may be problematic.

Section 87724(c)(4) (Renumbered from Section 87724(a)(1).)

Specific Purpose:

The specific purpose of this amendment is to change language from "staffing is adequate to provide supervision for residents with dementia while meeting the needs of all facility

residents" to "adequate number of direct care staff to support each resident's physical, social, emotional, safety and health care needs as identified in the current appraisal." Language is added to identify areas of the resident's appraisal and to reorganize information for ease of use. Reference to Section 87565 and to meeting the needs of all facility residents is removed. Section 87724(a)(1) is renumbered to Section 87724(c)(4) for clarity.

Factual Basis:

This section is necessary to clearly state that direct care staffing must be sufficient to provide for each resident's need for care and supervision as identified on each resident's appraisal. Reference to Section 87565 and to meeting the needs of all facility residents is removed since Section 87724 applies only to residents with dementia. Re-numeration is necessary for consistency.

Final Modification:

This section is being amended to replace "the" with "his/her" for clarity.

Section 87724(c)(4)(A) (Renumbered from Section 87724(a)(1)(A).)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to add the phrase "requirements specified in" for clarification. The title of Section 87581 is added for clarity and ease of use. Section 87724(a)(1)(A) is renumbered to Section 87724(c)(4)(A) for numerical consistency.

Section 87724(c)(5) (Renumbered from Section 87724(a)(6)(A).)

Specific Purpose:

The specific purpose of this amendment is to add the phrase "as specified in Section 87569, Medical Assessment" and to reorganize information. The phrase "with dementia shall have" is removed. Section 87724(a)(6)(A) is renumbered to Section 87724(c)(5).

Factual Basis:

This section is amended for clarity and ease of use. The phrase "as specified in Section 87569, Medical Assessment" provides a cross-reference to clarify what the medical assessment must contain and who can do the assessment. Since Section 87724(c) specifies that this section refers only to licensees who accept and retain residents with dementia, the phrase "with dementia shall have" is duplicative and is repealed. Re-numeration is for consistency.

Section 87724(c)(5)(A) (Renumbered from Section 87724(a)(6)(B).)

Specific Purpose:

The specific purpose of this amendment is to repeal language referring to resident relocation. Section 87724(c)(5)(A) is renumbered from Section 87724(a)(6)(B).

Factual Basis:

This section is amended for clarity and ease of use. Resident relocation is not particular to residents with dementia and is addressed in Section 87589, Eviction Procedures. This section is renumbered for consistency.

Section 87724(c)(6)

Specific Purpose:

The specific purpose of adopting this section is to restate the requirement to conduct appraisals on an ongoing basis, as specified in Section 87587.

Factual Basis:

This section is necessary to ensure that the care and supervision needs of residents with dementia are being met. One aspect of the dementing illnesses is the unpredictable and sometimes sudden increase or decrease in need for care and supervision. These changes can be permanent or oscillate back and forth creating what is often referred to as "a good day" or "a bad day." The workgroup suggested that an ongoing assessment of the resident's needs should be clearly stated.

Section 87724(c)(7) (Renumbered from Section 87724(c)(1)(G).)

Specific Purpose:

The specific purpose of this amendment is to make a grammatical change and to allow facility-wide practices to be optional.

Factual Basis:

This amendment is necessary to allow for situations in which facility-wide practices are not used to minimize the need for psychoactive medications. The workgroup suggested that this requirement is problematic when facility-wide practices are not in place for the purpose of reducing the need for medications and the resident's physician is not aware of facility-wide practices. This amendment provides clarity and ease of use. Section 87724(c)(7) is renumbered from Section 87724(c)(1)(G) for consistency. A grammatical change is made for clarity.

Final Modification:

At the Department's discretion, this section is being deleted. Physicians can address residents' needs for psychoactive medications on an individual basis. The Department or licensee has no authority over medications prescribed by a medical professional.

Section 87724(c)(8) (Renumbered from Section 87724(c)(1)(D).) (Post-Hearing Modification -- Renumbered to Section 87724(c)(7).)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to make a grammatical change. Section 87724(c)(8) is renumbered from Section 87724(c)(1)(D). This amendment is necessary for clarity and ease of use.

Final Modification:

This section is being renumbered to Section 87724(c)(7) to maintain numerical consistency because the originally proposed Section 87724(c)(7) is being deleted. This section is being further amended at the Department's discretion. Proposed language deletes the word "that" and adds the word "shall" to clarify that the licensee who accepts and retains residents with dementia must have an activity program that meets the specified requirements. The words "addresses" and "includes" is being changed to "address" and "include" in order to be grammatically correct with the change made in the regulation's language.

Section 87724(d) (Renumbered from Sections 87724(a)(5) and (a)(5)(A).)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to reorganize information from Sections 87724(a)(5) and (a)(5)(A) and to add the title of Section 87691 for ease of use. Section 87724(d) is renumbered from Sections 87724(a)(5) and (a)(5)(A) for clarity. Wording changes are made for clarity. For more accuracy, "of the physical plant" is deleted and replaced with "modifications." Safety modifications need to be made to ensure that various items in the facility are inaccessible to residents in order to protect their health and safety.

Final Modification:

As a result of testimony, the Department is moving "to residents" to make the language more grammatically correct. The phrase "with dementia" is being added for clarification. The word "as" is being deleted as it is unnecessary.

Section 87724(e) (Renumbered from Section 87724(a)(5)(B).)

Specific Purpose:

The specific purpose of this amendment is to make a grammatical change and to require the facility to be operated in compliance with state and local building codes. Section 87724(e) is renumbered from Section (a)(5)(B).

Factual Basis:

This amendment is necessary to strengthen the requirement for bodies of water to be fenced in a manner to best provide for the health and safety of residents. Re-numeration is for consistency. The grammatical correction is for clarity and consistency.

Sections 87724(f) and (f)(1) (Renumbered from Section 87724(a)(5)(C).)

Specific Purpose/Factual Basis:

The specific purpose of these amendments is to reorganize existing requirements for clarity and ease of use. Parentheses are put around the "s" on resident(s) because there may only be one resident that this section applies to. Section 87724(f)(1) is renumbered from Section 87724(a)(5)(C). Section 87724(f) is added at the Department's discretion to serve as a clear lead-in sentence to specify that the items specified in Sections 87724(f)(1) and (2) are to be stored inaccessible to residents with dementia.

Section 87724(f)(2) (Renumbered from Section 87724(a)(5)(D).)

Specific Purpose:

The specific purpose of this amendment is to reorganize existing requirements for clarity and ease of use and to delete the reference to Section 87575. Nutritional supplements, vitamins, gardening supplies and alcohol are added as items that can present a health and safety risk and must be stored inaccessible to residents with dementia. The word "certain" is added before "plants." Section 87724(f)(2) is renumbered from Section 87724(a)(5)(D).

Factual Basis:

This amendment is necessary to delete an unnecessary reference to Section 87575, which provides no clarity since it talks generally about medication usage and centrally storing medications. The addition of nutritional supplements, vitamins, gardening supplies and alcohol is to require those items to be stored inaccessible to residents. The word "certain" is added before "plants" because not all plants are toxic. "All" is removed because, as shown in Section 87724(g), some potentially toxic substances that are grooming and hygiene items may be kept unless there is evidence to substantiate that the resident cannot safely manage the items. Re-numeration is for consistency and ease of use.

Final Modification:

At the Department's discretion and as a result of testimony, the language in this section is being amended by moving the words "alcohol" and "cigarettes" and adding additional toxic substances, including cleaning supplies and disinfectants, for clarification. These amendments are also necessary for consistency with Section 87692(a) which specifies that disinfectants, cleaning solutions, poisons, firearms and other items which could pose a danger if readily available to residents shall be stored where inaccessible to residents. The Department must balance necessary safeguards for residents with dementia while maximizing their independence.

Section 87724(g)

Specific Purpose:

The specific purpose of adopting this section is to allow residents to keep personal hygiene and grooming items in their own possession unless it presents a health and safety risk.

Factual Basis:

The Department is adding this section to ensure dignity is provided to residents by allowing them to continue to have access to products used for grooming and hygiene. The work group suggested that residents keep personal grooming and hygiene products that do not present any health and safety risk. However, criteria was spelled out in Sections 87724(g)(1) through (g)(3) that can be used as evidence to substantiate when a resident cannot safely manage these items, resulting in a health and safety issue, whereby the items should be removed.

Section 87724(g)(1)

Specific Purpose:

The specific purpose of adopting this section is to state that documentation from the resident's physician may be used as evidence that the resident is at risk if allowed to self-store grooming and hygiene items.

Factual Basis:

The Department is adding this section to clarify what evidence can be included in the determination of a health and safety risk for the self storage of personal grooming and hygiene products.

Section 87724(g)(2)

Specific Purpose:

The specific purpose of adopting this section is to strengthen and restate the existing requirement for ongoing assessment of the residents' care and supervision needs.

Factual Basis:

This section is necessary to clarify the responsibility of the licensee to continually assess the resident's supervision needs to ensure that access to grooming and personal hygiene supplies do not pose a health and safety risk.

Section 87724(g)(3)

Specific Purpose:

The specific purpose of adopting this section is to add the requirement for the licensee to develop and maintain a written plan to ensure that a resident's grooming and hygiene supplies that are stored accessible do not pose a health and safety risk to other residents.

Factual Basis:

This section is necessary to protect the health and safety of residents when grooming and hygiene products for certain residents are stored accessible.

Section 87724(h) (Renumbered from Section 87724(a)(5)(E).)

Specific Purpose:

The specific purpose of this amendment is to specify that outdoor facility space used for resident recreation and leisure must be enclosed and to add walls to the options for enclosure. The word "yards" is repealed. Section 87724(h) is renumbered from Section 87724(a)(5)(E).

Factual Basis:

This amendment is necessary for clarification and to allow for outside areas used for resident recreation and leisure, such as courtyards that are surrounded by walls, to meet the requirement of an enclosed outdoor facility space. The amendment is necessary to clarify that the licensee does not have to enclose all outdoor areas, but only those used for a resident's recreation and leisure. The term "yard" is too general. The word "enclosed" clarifies there should be no break in the fencing surrounding the recreation area. These amendments are necessary to protect the safety of residents. Re-numeration is necessary for consistency and ease of use.

Section 87724(i) (Renumbered from Section 87724(d).)

Specific Purpose:

The specific purpose of this amendment is to change the term "authorized representative" to "conservator," to add the language "the resident's rights as specified in" to clarify the content of Section 87572, and to add the title of Section 87572. Section 87724(i) is renumbered from Section 87724(d).

Factual Basis:

This amendment is necessary to correct the category of persons who can approve the use of an egress alert device. An authorized representative cannot give consent for a resident unless that person is also the resident's conservator. The language "the resident's rights as specified in" is added to clarify the content of Section 87572. The title of Section 87572 is added for clarity. Re-numeration is for consistency and ease of use.

Final Modification:

At the Department's discretion and as a result of testimony, the language in the regulation is being amended for grammatical changes and for clarity. The word "and" is being replaced with "or" because a resident may have one or the other, not necessarily both. The word "resident" is being removed before egress alert devices and language is added to specify egress alert devices "worn by the resident." It is not the intent of the Department to include devices that do not violate the resident's personal rights, such as door motion detectors that may give a beeping sound. Other devices not worn by the resident do not require written consent or approval. Also, a comma is being added after "worn by the resident."

Section 87724(j) (Renumbered from Section 87724(a)(5)(F).)

Specific Purpose:

The specific purpose of this amendment is to remove the language "Exterior doors," "include an operational bell/buzzer or other," "to alert," and "when the door is opened" and to reorganize information. Language is proposed to specify "The licensee" will have an "alert feature to monitor exits, if exiting presents a hazard to any resident." The language "or other" is also added. Section 87724(j) is renumbered from 87724(a)(5)(F).

Factual Basis:

This amendment is necessary to allow for various types of egress alert features that licensees may have in place and to clarify that this requirement applies only if exiting presents a hazard to any resident. "The licensee" is added because that individual is responsible for ensuring this regulation is followed. Re-numeration is necessary for consistency.

Section 87724(k) (Renumbered from Section 87724(e).)

Specific Purpose/Factual Basis:

The specific purpose of this section is to renumber Section 87724(e) to Section 87724(k) for numerical consistency.

Section 87724(k)(1) (Renumbered from Section 87724(e)(1).)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to change the term "Department" to "licensing agency" for consistency and ease of use. Section 87724(k)(1) is renumbered from Section 87724(e)(1) for numerical consistency.

Section 87724(k)(2) (Renumbered from Section 87724(e)(2).)

Specific Purpose/Factual Basis:

Section 87724(k)(2) is renumbered from Section 87724(e)(2) for consistency in numeration.

Section 87724(k)(3) (Renumbered from Section 87724(e)(3).)

Specific Purpose:

The specific purpose of this amendment is to repeal the language "Following the disaster and mass casualty plan specified in Section 87724(a)(7)" and to replace the term "facility" staff with "direct care" staff. The phrase "who provide or supervise resident care and supervision" is also repealed. Section 87724(k)(3) is renumbered from Section 87723(e)(3).

Factual Basis:

This section is necessary because the language "Following the disaster and mass casualty plan specified in Section 87724(a)(7)" is an incorrect cross-reference because the plan does not require fire and earthquake drills. "Facility" staff is replaced with "direct care" staff because direct care staff is defined as staff directly responsible for providing direct care and/or direct assistance with services to the residents. The phrase "who provide or supervise resident care and supervision" is repealed because of redundancy. Section 87724(k)(3) is renumbered from Section 87723(e)(3) for consistency.

Section 87724(k)(4) (Renumbered from Section 87724(e)(4).)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to add the title of Section 87572 for clarity and to repeal the phrase "with dementia" since Section 87724 applies only to residents with

dementia. Section 87724(e)(4) is renumbered to Section 87724(k)(4) for numerical consistency.

Section 87724(k)(5) (Renumbered from Section 87724(e)(5).)

Specific Purpose:

The specific purpose of this amendment is to replace the language "an egress delay" with "redirection" and to add the phrase "with staff supervision." Section 87724(e)(5) is renumbered to Section 87724(k)(5).

Factual Basis:

This amendment is necessary to clarify that if a resident attempts to leave a facility that has a delayed egress device and redirection is not effective, the resident must be permitted to leave the facility and must be supervised by staff to protect his/her health and safety. Section 87724(e)(5) is renumbered to Section 87724(k)(5) for numerical consistency.

Section 87724(k)(6) (Renumbered from Section 87724(e)(6).)

Specific Purpose:

The specific purpose of this amendment is to add the title of Section 87572, to delete the term "with dementia when" and to make a grammatical correction. Section 87724(k)(6) is renumbered from Section 87724(e)(6).

Factual Basis:

This amendment is necessary for clarity, consistency and ease of use. Since Section 87724 refers only to residents with dementia, the phrase "with dementia" is unnecessary and is repealed. A grammatical change is made by repealing "when" and adding "if," and the title of Section 87572 is added for clarity. Section 87724(k)(6) is renumbered from Section 87724(e)(6) for numerical consistency.

Section 87724(k)(7) (Renumbered from Section 87724(e)(7).)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is reorganization of information and to add clarification that unsupervised residents wandering away from the facility must be reported to the licensing agency. This section also changes the term "representative" to "person" and changes the term "Department" to "licensing agency" for consistency and ease of use. Since Section 87724 concerns persons with dementia, the language "with dementia" is removed because it is redundant and the rest of the sentence is reorganized for clarity. The language "the incident" is proposed for clarity. Section 87724(k)(7) is renumbered from Section 87724(e)(7) for numerical consistency.

Section 87724(k)(8) (Renumbered from Section 87724(e)(8).)

Specific Purpose:

The specific purpose of this amendment is to delete the term "with dementia." Section 87724(k)(8) is renumbered from Section 87724(e)(8).

Factual Basis:

This amendment is necessary for consistency and ease of use. Since Section 87724 refers only to residents with dementia, the phrase "with dementia" is unnecessary and is repealed. Section 87724(k)(8) is renumbered from Section 87724(e)(8) for numerical consistency.

Section 87724(k)(9) (Renumbered from Section 87724(e)(9).)

Specific Purpose/Factual Basis:

Section 87724(k)(9) is renumbered from Section 87724(e)(9) for consistency in numeration.

Section 87724(l) (Renumbered from Section 87724(f).)

Specific Purpose/Factual Basis:

The specific purpose of this section is to make a grammatical correction for clarity. Section 87724(l) is renumbered from Section 87724(f) for consistency in numeration.

Section 87724(l)(1) (Renumbered from Section 87724(f)(1).)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to change the terms "Department" to "licensing agency" and "his/her" to "their" for consistency and ease of use. "The licensee" is changed to "Licensees" to be grammatically correct with the change of "his/her" to "their." Section 87724(l)(1) is renumbered from Section 87724(f)(1) for numerical consistency.

Section 87724(l)(2) (Renumbered from Section 87724(f)(2).)

Specific Purpose/Factual Basis:

Section 87724(l)(2) is renumbered from Section 87724(f)(2) for consistency in numeration.

Existing Section 87724(f)(2)

Specific Purpose:

The specific purpose of this amendment is to repeal the reference to the requirement for the dementia waiver when accepting residents with dementia in Section 87724(f)(3).

Factual Basis:

The Department has determined that licensees who accept or retain residents with dementia do not need to obtain a waiver to assure that the residents' health and safety are protected. There are already safeguards in place because Section 87724 regulates the care of persons with dementia and proposed Sections 87725 and 87725.1 add additional safeguards if a facility advertises dementia special care. Also, proposed Section 87582(c)(4) no longer specifies "dementia." The work group suggested that residents with dementia experience unnecessary evictions from their residential settings when they acquire a diagnosis of dementia and the facility does not have and/or does not want to apply for a dementia waiver.

Section 87724(l)(3) (Renumbered from Section 87724(f)(4).)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to repeal the language "Pursuant to Section 87116." Section 87116 addresses the allowance for waivers and exceptions, but this added clarification is not necessary since the section already specifies that there needs to be a waiver from Section 87572(a)(6) and too many cross-references are confusing. Section 87724(f)(4) is renumbered to Section 87724(l)(3) for numerical consistency.

Section 87724(l)(3)(A)

Specific Purpose:

The specific purpose of adopting this section is to add the requirement that facility staff shall attempt to redirect any unaccompanied resident(s) leaving the facility when there are locked exterior doors or perimeter fence gates.

Factual Basis:

This amendment is necessary to create the least restrictive environment through redirection when locked exterior doors or perimeter fence gates are utilized.

Section 87724(l)(4) (Renumbered from Section 87724(f)(5).)

Specific Purpose:

The specific purpose of this amendment is to repeal the requirement for the licensee to send to the Department, within five working days of each resident's admission, a copy of the conservator's written consent or a statement signed by a non-conserved resident regarding voluntary admission into a facility even though there are exterior door locks or locked perimeter fencing. Section 87724(l)(4) is renumbered from Section 87724(f)(5).

Factual Basis:

The Department has determined that there is no additional protection of the resident's health and safety afforded by sending a copy of the signed consent statement to the Department. Reviewing the files at the facility during a licensing visit will provide the necessary verification that the requirement of this section is met. Section 87724(l)(4) is renumbered from Section 87724(f)(5) for numerical consistency.

Section 87724(l)(4)(A) (Renumbered from Section 87724(f)(5)(A).)

Specific Purpose/Factual Basis:

Section 87724(l)(4)(A) is renumbered from Section 87724(f)(5)(A) for consistency in numeration.

Section 87724(l)(4)(B) (Renumbered from Section 87724(f)(5)(B).)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to reorganize information for clarity and ease of use. The word "states" is added for clarity. Section 87724(l)(4)(B) is renumbered from Section 87724(f)(5)(B) for numerical consistency.

Sections 87724(l)(5) through (7) (Renumbered from Sections 87724(f)(6) through (8).)

Specific Purpose/Factual Basis:

Sections 87724(l)(5) through (7) are renumbered from Sections 87724(f)(6) through (8) for consistency in numeration.

Section 87724(l)(8) (Renumbered from Section 87724(f)(9).)

Specific Purpose:

The specific purpose of this amendment is to repeal the language "Following the disaster and mass casualty plan specified in Section 87724(a)(7)" and to replace the term "facility" staff with "direct care" staff. The phrase "who provide or supervise resident care and supervision" is also repealed. Section 87724(f)(9) is renumbered to Section 87724(l)(8).

Factual Basis:

This section is necessary because the language "Following the disaster and mass casualty plan specified in Section 87724(a)(7)" is an incorrect cross-reference because the plan does not require fire and earthquake drills. "Facility" staff is replaced with "direct care" staff because direct care staff is defined as staff directly responsible for providing direct care and/or direct assistance with services to the residents. The phrase "who provide or

supervise resident care and supervision" is repealed to avoid redundancy. Section 87724(f)(9) is renumbered to Section 87724(l)(8) for numerical consistency.

Section 87725 (Title)

Specific Purpose:

The specific purpose of this regulation is to adopt a new section and title and to place into regulation the requirements for a licensee who advertises dementia special care, programming, and/or environments.

Factual Basis:

This regulation is necessary to implement Health and Safety Code Sections 1569.15(m), 1569.626 and 1569.627 that establish requirements for licensees of RCFEs that advertise dementia special care, programming, and/or environments. For ease of the reader and for clarity, a new section number is proposed to follow Section 87724, Care of Persons With Dementia. A new section number is proposed because Sections 87725, 87725.1, and 87725.2 pertain only to licensees who advertise dementia special care, programming, and/or environments. For consistency, all section numbers beginning with 87725 will pertain to licensees who advertise dementia special care, programming, and/or environments.

Section 87725(a)

Specific Purpose:

The specific purpose of adopting this section is to clarify that all licensees who meet the requirements in Section 87724 may provide dementia care. However, Section 87725 specifies that licensees who advertise, promote, or otherwise hold themselves out as providing special care, programming, and/or environments for residents with dementia or related disorders must meet the specified requirements in this section. The title for Section 87724 is provided.

Factual Basis:

This regulation is necessary because the Department wants to make it clear that all subsections under Section 87725 pertain only to licensees who advertise, promote, or otherwise hold themselves out as providing special care, programming, and/or environments for residents with dementia or related disorders. Clarification is also made that all licensees who meet the requirements in Section 87724 may provide dementia care. A title for Section 87724 is added for ease of use.

Final Modification:

As a result of testimony, the Department is making the following amendments in this section for clarity. The Department is replacing the phrase "Licensees who meet" with "in addition to." The language "may provide dementia care" is deleted because Section 87724

only applies to a licensee who is caring for residents with dementia and the "L" in Licensee is made lower case as a grammatical correction. The word "also" is removed because it is no longer necessary since amended language says "In addition to."

Section 87725(a)(1)

Specific Purpose:

The specific purpose of adopting this section is to clarify that a licensee who advertises or promotes dementia special care, programming, and/or environments must also comply with the requirements of Title 22, Division 6, Chapter 8 of the California Code of Regulations governing RCFEs.

Factual Basis:

This section is necessary so that the licensee who is advertising dementia special care, programming, and/or environments also follows all regulations for RCFEs that are in Title 22, Division 6, Chapter 8 of the California Code of Regulations. The Department wants to make it clear that even though Sections 87725, 87725.1 and 87725.2 pertain to a licensee who advertises dementia special care, programming, and/or environments, the general RCFE requirements must still be met.

Final Modification:

At the Department's discretion, this section is being deleted as it is unnecessary because everything in Sections 87700 through 87731.4 pertains to the RCFE regulations and licensees know that they have to comply with all RCFE regulations. It is redundant to have to repeat for each section that the licensee has to follow Title 22, Division 6, Chapter 8.

Section 87725(a)(2) (Post-Hearing Modification -- Renumbered to Section 87725(a)(1).)

Specific Purpose:

The specific purpose of adopting this section is to require licensees to ensure that their direct care staff who provide care to any resident(s) with dementia meet the training requirements specified in Section 87725.1. The requirements specify that direct care staff receive six hours of resident care orientation within the first four weeks of employment and eight hours of in-service training per year on the subject of serving residents with dementia.

Factual Basis:

This section is necessary to implement Health and Safety Code Section 1569.626, which requires licensees who advertise dementia special care, programming, and/or environments to meet specified training requirements for all direct care staff. Statute requires six hours of resident care orientation within the first four weeks of employment and eight hours of in-service training per year on the subject of serving residents with dementia. The training requirements for direct care staff are specified in Section 87725(a)(2) [Post-Hearing

Modification - Section 87725(a)(2) is renumbered to Section 87725(a)(1).] for emphasis because all the requirements that must be met in order for a licensee to advertise or promote dementia special care, programming, and/or environments are explained altogether in Section 87725 for easy reference. The specifics pertaining just to the training requirements if a licensee is advertising dementia special care, programming, and/or environments are all under Section 87725.1.

Final Modification:

This section is being renumbered to Section 87725(a)(1) to maintain numerical consistency because the originally proposed Section 87725(a)(1) is being deleted.

Section 87725(a)(2)(A) (Post-Hearing Modification -- Renumbered to Section 87725(a)(1)(A).)

Specific Purpose:

The specific purpose of adopting this section is to clarify that the term "direct care staff" excludes staff used only for staff mealtime and break relief.

Factual Basis:

This section is necessary to clarify which staff are considered direct care staff and therefore must meet the training requirements in Section 87725.1 if the licensee advertises dementia special care, programming, and/or environments. The Department does not require staff to meet the training requirements under Section 87725.1 unless their primary role is to provide direct care to residents with dementia. This section is consistent with Section 87580(a)(1) that requires coverage when regular staff members are absent. Staff who take the place of direct care staff who are away from the facility for reasons such as illness, vacation, or appointments are providing care and supervision and should be trained. Staff used to relieve other staff who are on breaks or having a meal are only helping out for short intervals. The regular staff would be back shortly.

Final Modification:

This section is being renumbered to Section 87725(a)(1)(A) to maintain numerical consistency because the originally proposed Section 87725(a)(1) is being deleted. As a result of testimony, this section is further being amended to replace the word "excludes" with "includes." Substitute staff may be providing assistance with residents with dementia a large portion of the day and need to be trained as well to better serve that resident group who have specific needs. In larger facilities in particular, there are floating relief staff who have ongoing contact with residents as regular staff rotate through their breaks. Relief staff may be providing care for a number of hours to enable all the staff to take their breaks. The word "only" is being deleted because it is unnecessary.

Section 87725(a)(2)(B) (Post-Hearing Modification -- Renumbered to Section 87725(a)(1)(B).)

Specific Purpose:

The specific purpose of adopting this section is to clarify that if a licensee is advertising or promoting dementia special care, programming, and/or environments, then direct care staff must meet the training requirements in Section 87725.1 and these direct care staff may provide dementia special care to residents in the facility (itself) or in designated areas of the facility.

Factual Basis:

This section is necessary to provide further clarification for direct care staff who are providing dementia special care and must meet the training requirements in Section 87725.1 because the licensee is advertising dementia special care, programming, and/or environments. For clarity, language specifies that care for residents with dementia may be provided by direct care staff in an entire facility, or it may be provided in a designated area of a facility. Examples of a designated area of a facility may include another wing, floor, or building on the premises.

Final Modification:

This section is being renumbered to Section 87725(a)(1)(B) to maintain numerical consistency because the originally proposed Section 87725(a)(1) is being deleted. This section is being further amended to delete the word "(itself)" because it is unnecessary.

Section 87725(a)(3) (Post-Hearing Modification -- Renumbered to Section 87725(a)(2).)

Specific Purpose:

The specific purpose of adopting this section is to require the licensee to not only meet the requirements specified in Sections 87222 and 87724(b) pertaining to the plan of operation, but also to submit a description of specified facility features as they relate to dementia special care. These facility features are described in sections following Section 87725(a)(3).

Factual Basis:

This section is necessary to implement Health and Safety Code Sections 1569.15(m) and 1569.627 that specify which facility features must be addressed in the plan of operation. If the licensee already has a plan of operation, then these features have to be submitted to the licensing agency to supplement the existing plan of operation. New licensees who know that they are going to advertise dementia special care, programming, and/or environments must put the description of the facility features in the original plan of operation.

Final Modification:

This section is being renumbered to Section 87725(a)(2) to maintain numerical consistency because the originally proposed Section 87725(a)(1) is being deleted. As a result of testimony, this section is being further amended to add the words "brief narrative." The Department is replacing the word "provided" with "available" since services that are available may not always be provided to everyone. This amendment is necessary to be consistent with the statutory language in Health and Safety Code Section 1569.627 and for clarity. A comma is being added to set off "specified in Sections 87222 and 87724(b)" for clarity and to be grammatically correct.

Section 87725(a)(3)(A) (Post-Hearing Modification -- Renumbered to Section 87725(a)(2)(A).)

Specific Purpose:

The specific purpose of adopting this section is to require licensees to describe their philosophy in the plan of operation that must include, but not be limited to, a description of the program goals/objectives in relation to meeting the needs of residents with dementia.

Factual Basis:

This section is necessary to implement Health and Safety Code Sections 1569.15(m) and 1569.627(a), requiring the information in a facility's plan of operation to include a brief narrative description of the philosophy, including, but not limited to, program goals. The terms "objectives" and "in relation to meeting the needs of residents with dementia" are included for clarity.

Final Modification:

This section is being renumbered to Section 87725(a)(2)(A) to maintain numerical consistency because the originally proposed Section 87725(a)(1) is being deleted.

Section 87725(a)(3)(B) (Post-Hearing Modification -- Renumbered to Section 87725(a)(2)(B).)

Specific Purpose:

The specific purpose of adopting this section is to require the licensee to describe in the plan of operation the pre-admission assessment that is used in the facility. The licensee must include a description of the types of assessment tools used to determine residents' dementia care needs and describe who will participate in the assessment.

Factual Basis:

This section is necessary to implement Health and Safety Code Sections 1569.15(m) and 1569.627(b), requiring that any RCFE advertising dementia special care, programming,

and/or environments must disclose to the Department the special features of the facility in its plan of operation. The information shall include a brief narrative description of the pre-admission assessment. The plan of operation will be available to the public upon request as it is important for residents and their family or responsible persons to know what types of assessment tools will be used to determine the care needs and to learn who will participate in the assessment. There are many types of assessment tools. In addition, many people could participate in the assessment including the resident, family, responsible person, conservator, physician, staff, and the licensee.

Final Modification:

This section is being renumbered to Section 87725(a)(2)(B) to maintain numerical consistency because the originally proposed Section 87725(a)(1) is being deleted.

Sections 87725(a)(3)(C) through (a)(3)(C)3. (Post-Hearing Modification -- Renumbered to Sections 87725(a)(2)(C) through (a)(2)(C)3.)

Specific Purpose:

The specific purpose of adopting these sections is to require licensees to describe specific features in their plan of operation that must be in place upon admission of a resident who requires dementia special care. The licensee must specify designated areas in the facility where dementia special care is provided, which may be the entire facility, or only parts of it. The licensee must describe services provided to residents with dementia, including such services as hospice care (if allowable) and a description of how costs for these services are determined. Lastly, the licensee must describe procedures that are in place to ensure that the plan of operation will be made available for review upon request as required by Section 87725(a)(4).

Factual Basis:

These sections are necessary to implement Health and Safety Code Sections 1569.15(m) and 1569.627(c), requiring that any RCFE advertising dementia special care, programming, and/or environments must disclose to the Department the special features of the facility in its plan of operation. The information shall include a brief narrative description pertaining to the admission process and a description of items that must be addressed when admitting a resident who requires dementia special care. The Department is requiring a description of specific items that would be important for the public to know and that should be described in the plan of operation. The Department and the public need to know which areas of the facility a resident with dementia will have access. It is important for the public and the Department to know what services the licensee will provide residents with dementia. Sometimes when a condition changes, the resident and the responsible person, if any, or the conservator are unaware that the licensee will not allow a specific health condition in the facility or that the costs are high for certain health conditions. Lastly, Health and Safety Code Section 1569.627 requires that licensees have procedures to ensure that the plan of operation is available to the public. Section 87725(a)(4) requires that the plan of operation be referred to in the admission agreement.

Final Modification:

These sections are being renumbered to Section 87725(a)(2)(C) through (a)(2)(C)3. to maintain numerical consistency because the originally proposed Section 87725(a)(1) is being deleted. At the Department's discretion, renumbered Section 87725(a)(2)(C)2. is being amended to more clearly convey the intent of the regulations. The Department is deleting the phrase "including hospice care (if allowable), and a description of how costs for these services are determined." Section 87568(c) requires admission agreements to specify payment provisions that include the basic services rate, including any exempt-income allowance, if the resident agrees to such change. Renumbered Section 87725(a)(2)(C)2. requires the licensee who is promoting dementia special care to include a brief narrative description on the available services that are specific to residents with dementia so the public will know the services that are different than would normally be offered. Hospice care is not specific to residents with dementia, so that example is not good and not necessary.

Renumbered Section 87725(a)(2)(C)3. is being amended to make a grammatical correction to state the plan of operation "is" available, rather than "will be made" available and to reflect the proposed renumbering of the cross-reference from Section 87725(a)(4) to Section 87725(a)(3).

Sections 87725(a)(3)(D) through (a)(3)(D)3. (Post-Hearing Modification -- Renumbered to Sections 87725(a)(2)(D) through (a)(2)(D)3.)

Specific Purpose:

The specific purpose of adopting these sections is to require licensees to include in their plan of operation a description of various aspects about assessments in relation to residents receiving dementia special care. Licensees must describe the types of assessments used, who will participate in resident assessments, what procedures are in place for ensuring the opportunity for resident and family involvement in these assessments, and what is the frequency of the assessments.

Factual Basis:

These sections are necessary to implement Health and Safety Code Sections 1569.15(m) and 1569.627(d), requiring that any RCFE advertising dementia special care, programming, and/or environments must disclose the special features of the facility in its plan of operation. The information shall include a brief narrative description pertaining to assessments and how the specified items on assessments are used in relation to residents receiving dementia special care. There are many different kinds of assessment tools with no consensus about any of them, so it is important that this information be included in the plan of operation. The workgroup was divided on assessment frequency and tools to use, but was concerned that the resident and family should be given the opportunity to be involved in the assessment.

Final Modification:

These sections are being renumbered to Sections 87725(a)(2)(D) through (a)(2)(D)3. to maintain numerical consistency because the originally proposed Section 87725(a)(1) is being deleted.

Sections 87725(a)(3)(E) through (a)(3)(E)3.(i) (Post-Hearing Modification -- Renumbered to Sections 87725(a)(2)(E) through (a)(2)(E)3.(i).)

Specific Purpose:

The specific purpose of adopting these sections is for licensees to describe in the plan of operation certain aspects of their activity plan/program for residents with dementia. The licensee must include, but is not limited to, the types of activities provided; the frequency of the activities; and the process the licensee will use to determine the types of activities that must be planned to encompass residents' needs. Clarification is provided to the licensee to show examples of different types of activities that could be provided to the resident and examples of types of things that the resident's needs could be based upon.

Factual Basis:

These sections are necessary to implement Health and Safety Code Sections 1569.15(m) and 1569.627(e), requiring that any RCFE advertising dementia special care, programming, and/or environments must disclose the special features of the facility in its plan of operation. The information shall include a brief narrative description pertaining to the program in relation to residents receiving dementia special care. It is important to know the types of activities that the licensee offers, how often the activities are provided and how the licensee determines what types of activities shall be planned to meet all of the residents' needs. The Department provides a broad list of activities for clarification and to inform the licensee of the types of activities available. This list was developed after reviewing other states' assisted living regulations, including Virginia (Virginia Department of Social Services, Standards and Regulations for Licensed Adult Care Residences, 22 VAC 40-71-260 and 40-71-700); Washington (Dementia Care Pilot & Expansion Projects in Boarding Homes, Exhibit A, pages 4, 5, 11, and 12); Maine (Regulations Governing the Licensing and Functioning of Assisted Living Facilities, Chapter 4, Level II, 27050-27100); and Texas (Texas Department of Human Services, Licensing Standards for Assisted Living Facilities, Section 92.53(g)). The Department reviewed regulations from North Carolina (Rules for the Licensing of Adult Care Homes, Title 10, Subchapters 42C and D, .1905 and .2005) and Mississippi (Summary of Alzheimer's Disease/Dementia Care Unit, Regulations Changes, Draft 3.0, 104.1) for further insight into activity programs, including a requirement for licensees to describe their process for determining what types of activities shall be planned to encompass the residents' needs. The Department provides a list of things that the licensee can use to determine the activities needed to meet the residents' needs. This list provides further clarification and information to assist the licensee.

Final Modification:

These sections are being renumbered to Sections 87725(a)(2)(E) through (a)(2)(E)3.(i) to maintain numerical consistency because the originally proposed Section 87725(a)(1) is being deleted. Renumbered Section 87725(a)(2)(E)3.(i) is being further amended to delete "resident" which is inconsistent with residents' in Section 87725(a)(2)(E)3., and to replace it with the word "these."

Section 87725(a)(3)(F) (Post-Hearing Modification -- Renumbered to Section 87725(a)(2)(F).)

Specific Purpose:

The specific purpose of adopting this section is for the licensee to describe experience and educational qualifications (if any) for direct care staff who provide dementia special care.

Factual Basis:

This section is necessary to implement Health and Safety Code Sections 1569.15(m) and 1569.627(f), requiring that any RCFE advertising dementia special care, programming, and/or environments must disclose the special features of the facility in its plan of operation. The information shall include a brief narrative description pertaining to the staff who provide dementia special care. The requirements in this section are in addition to the personnel requirements in Section 87565. The Department specifies that direct care staff who provide dementia special care must meet the requirements in Section 87725(a)(2) [Post-Hearing Modification - Section 87725(a)(2) is renumbered to Section 87725(a)(1).] which clarifies the training requirements that are necessary and further clarifies who direct care staff are and where they work. This section requires licensees to specify in their plan of operation any experience and educational qualifications that they require (if any), which are in addition to those requirements specified in Section 87725(a)(2) [Post-Hearing Modification - Section 87725(a)(2) is renumbered to Section 87725(a)(1).].

Final Modification:

This section is being renumbered to Section 87725(a)(2)(F) to maintain numerical consistency because the originally proposed Section 87725(a)(1) is being deleted. As a result of testimony, this section is being further amended because it was not the intent to have the licensee describe the experience and educational qualifications of each direct care staff; especially since there is often a large turnover in staff and the plan of operation would continually change. New proposed language specifies that the licensee has to describe the experience and education required for prospective direct care staff who will provide dementia special care. "Qualification" is placed after "staff" for clarity. "Educational qualifications" is amended to read "education required," which is more accurate. The words "if any" are being deleted because regulations already state specific requirements for direct care staff. Qualifications refer to experience required as a prior condition before direct care staff are allowed to provide special care to residents with dementia.

Sections 87725(a)(3)(G) and (a)(3)(G)1. (Post-Hearing Modification -- Renumbered to Section 87725(a)(2)(G).)

Specific Purpose:

The specific purpose of adopting these sections is for the licensee to provide a statement in the plan of operation indicating that direct care staff who provide dementia special care shall meet the training requirements under Section 87725.1, Training Requirements If Advertising Dementia Special Care, Programming, and/or Environments. In addition to the training requirements under Section 87725.1, the licensee shall describe any other training requirements for direct care staff.

Factual Basis:

These sections are necessary to implement Health and Safety Code Sections 1569.15(m) and 1569.627(g), requiring that any RCFE advertising dementia special care must disclose the special features of the facility in its plan of operation. The information shall include a brief narrative description pertaining to training for direct care staff who provide dementia special care. The licensee is required to meet all of the training requirements in Section 87725.1. This section clarifies that there are special training requirements. The subject matter, trainer/consultant qualifications, and documentation requirements are already specified in Section 87725.1. The Department does not want an exact description of the training in the plan of operation because this may change for every training the licensee provides, and the Department does not want the licensee to unnecessarily have to keep revising the plan of operation. Section 87725(a)(3)(G)1. also specifies that in addition to the training requirements under Section 87725.1, the licensee may describe any other training requirements that direct care staff will receive. This gives licensees a chance to describe additional training requirements they may require that go beyond statutory/regulatory requirements. This additional training may enable staff to better meet the needs of residents with dementia.

Final Modification:

This section is being renumbered to Section 87725(a)(2)(G) to maintain numerical consistency because the originally proposed Section 87725(a)(1) is being deleted. As a result of testimony and at the Department's discretion, renumbered Section 87725(a)(2)(G) is being amended and originally proposed Section (a)(3)(G)1. is being deleted. The licensee should be required to provide more detail about his/her training for direct care staff who provide dementia special care than simply to provide a statement that he/she is meeting the requirements. Initially, the Department did not want the licensee to have to repeat existing language in its plan of operation that is already in proposed regulation Section 87725.1, which describes all of the training requirements. The thought was that this would have made the plan of operation too lengthy and the requirements could be explained upon request at admission. The Department is amending the proposed regulation to require the licensee to describe the required training for direct care staff who provide dementia special care rather than just have a statement that direct care staff are meeting the training requirements under Section 87725.1, Training Requirements If Advertising Dementia

Special Care, Programming, and/or Environments. At a minimum, the description shall include information on the time frame for training, as specified in Section 87725.1(a)(2), and the training topics, as specified in Section 87725.1(a)(2)(A). The Department selected information of most interest to a potential facility resident or his/her family or responsible person. The Department does not want to place the burden on the licensee to continually have to change the plan of operation every time there is a change in training, which varies by trainer, and every time there needs to be new knowledge to care for current residents.

The originally proposed Section 87725(a)(3)(G)1 is being deleted since it is somewhat redundant to the requirements in renumbered Section 87725(a)(2)(G). This language specified that in addition, the licensee shall describe any other training requirements for direct care staff. The licensee would want to explain any training he/she requires that goes beyond statute if he/she is advertising dementia special care because this would help promote the facility. Proposed renumbered Section 87725(a)(3) specifies that the admission agreement shall inform the resident and the resident's responsible person, if any, or the conservator, that the facility features (including staff training) are described in the facility's plan of operation and that the plan of operation is available for review upon request.

Sections 87725(a)(3)(H) and (a)(3)(H)1. (Post-Hearing Modification -- Renumbered to Sections 87725(a)(2)(H) and (a)(2)(H)1.)

Specific Purpose:

The specific purpose of adopting these sections is for the licensee to describe in the plan of operation the environmental factors in the facility that ensure a safe, secure, familiar and consistent environment for residents with dementia. A list of these environmental factors is provided for the licensee's consideration.

Factual Basis:

These sections are necessary to implement Health and Safety Code Sections 1569.15(m) and 1569.627(h) requiring that any RCFE advertising dementia special care, programming, and/or environments must disclose the special features of the facility in its plan of operation. The information shall include a brief narrative description pertaining to the physical environment. This environment should promote mobility. The licensee must ensure that the resident is safe from falls and from wandering away by utilizing such measures as handrails and secured perimeters. A resident with dementia is often confused and needs to feel secure in the environment with familiar things. Sudden change causes confusion. A list of environmental factors that a licensee could consider is included to provide clarity. Ideas for environmental factors came from a review of other states' assisted living regulations, including North Carolina (Rules for the Licensing of Adult Care Homes, Title 10, Subchapters 42C and D, .1503); Oregon (Oregon Administrative Rules, 411-057-0040); Virginia (Virginia Department of Social Services, Standards and Regulations for Licensed Adult Care Residences, 22 VAC 40-71-700); Washington (Dementia Care Pilot & Expansion Projects in Boarding Homes, Exhibit A, 4.); and Mississippi (Summary of Alzheimer's Disease/Dementia Care Unit, Regulation Changes, Draft 3.0, 107.1, and 107.2).

Final Modification:

These sections are being renumbered to Sections 87725(a)(2)(H) and (a)(2)(H)1. to maintain numerical consistency because the originally proposed Section 87725(a)(1) is being deleted.

Sections 87725(a)(3)(I) through (a)(3)(I)4. (Post-Hearing Modification -- Renumbered to Sections 87725(a)(2)(I) through (a)(2)(I)4.)

Specific Purpose:

The specific purpose of adopting these sections is for the licensee to describe in the plan of operation the procedures that are in place when a resident with dementia has a change in his/her condition. Procedures that must be followed when a resident's condition changes, include, but are not limited to, an explanation of the following: 1) when a new care plan is required; 2) at what point a physician (if any) is involved in developing a care plan; 3) the special techniques/programs (if any) used for managing specific types of behavior; and 4) the conditions that would require a resident to be relocated to a more secure environment (e.g. delayed egress and/or secured perimeters).

Factual Basis:

These sections are necessary to implement Health and Safety Code Sections 1569.15(m) and 1569.627(i), requiring that any RCFE advertising dementia special care, programming, and/or environments must disclose the special features of the facility in its plan of operation. The information shall include a brief narrative description of the licensees' procedures when the resident shows a change in his/her health condition. The workgroup brought up issues that the Department considers important to be addressed in the plan of operation for the resident and responsible person (if any), or conservator. It is important to know when the licensee requires a new care plan and if the licensee will have a physician involved in developing a care plan for the resident. The licensee needs to explain any special techniques or programs (if any) used for managing specific types of behaviors, which may include such things as special activities, communication, personal intervention, a change of schedule for the resident, and creating a therapeutic environment. The licensee also needs to explain in the plan of operation the conditions that a resident may exhibit that would require a resident to be relocated to a more secure environment, which may include such things as delayed egress and secured perimeters.

Final Modification:

These sections are being renumbered to Sections 87725(a)(2)(I) through (a)(2)(I)4. to maintain numerical consistency because the originally proposed Section 87725(a)(1) is being deleted. At the Department's discretion, renumbered Section 87725(a)(2)(I)4. is being further amended to better meet the intent of the regulation. Language is deleted that specified that there needs to be a description of procedures to be followed when a resident's condition changes that would require a resident to be relocated to a more secure environment (e.g. delayed egress, secured perimeters). There are a lot of conditions that

require a resident to be relocated and once in awhile a relocation would mean moving an individual to a more secure environment, but sometimes the individual would have to be moved out of the facility because the licensee cannot safely meet the individual's needs and maintain their health and safety. There are already requirements in proposed regulation Section 87724(k) that list the initial and continuing requirements that must be met for the licensee to utilize delayed egress devices on exterior doors or perimeter fence gates. Proposed Section 87724(l) lists the initial and continuing requirement to be met for the licensee to lock exterior doors or perimeter fence gates.

Sections 87725(a)(3)(J) through (a)(3)(J)3.(i) (Post-Hearing Modification -- Renumbered to Sections 87725(a)(2)(J) through (a)(2)(J)3.(i).)

Specific Purpose:

The specific purpose of adopting these sections is to require the licensee to describe in the plan of operation the success indicators that are in place, including procedures 1) to ensure an ongoing review of facility programs pertaining to care of residents with dementia; 2) to make necessary adjustments to better meet residents' needs; and 3) to assess the program's overall effectiveness/success. Also provided are examples of areas that may be reviewed by the licensee to assess the program's effectiveness/success.

Factual Basis:

These sections are necessary to implement Health and Safety Code Sections 1569.15(m) and 1569.627(j), requiring that any RCFE advertising dementia special care, programming, and/or environments must disclose the special features of the facility in its plan of operation. The information shall include a brief narrative description pertaining to success indicators to determine whether the licensee is meeting the needs of the residents with dementia. The licensee must provide a description of procedures to ensure an ongoing review of facility programs pertaining to care of residents with dementia. Based on the needs of the resident, the licensee must make necessary adjustments to better meet residents' needs. The licensee must describe what procedures are used to determine the program's overall effectiveness and success in meeting the residents' needs. For clarification, examples are provided of areas that licensees may consider to determine their program's effectiveness.

Final Modification:

These sections are being renumbered to Sections 87725(a)(2)(J) and (a)(2)(J)3.(i) to maintain numerical consistency because the originally proposed Section 87725(a)(1) is being deleted.

Section 87725(a)(4) (Post-Hearing Modification -- Renumbered to Section 87725(a)(3).)

Specific Purpose:

The specific purpose of adopting this section is to require the licensee to include in the admission agreement, as specified in Section 87568(e), language that informs the resident and the responsible person, if any, or the conservator, that the licensee's facility features, as specified in Section 87725(a)(3) [Post-Hearing Modification - Section 87725(a)(3) is renumbered to Section 87725(a)(2).], are described in the plan of operation and are available for review upon request.

Factual Basis:

This section is necessary to ensure that the admission agreement language informs the resident and the responsible person, if any, or conservator, that the licensee's services, programs, and environments specific to specialized dementia care are described in the plan of operation and are available for review upon request. Workgroup participants wanted this informing language to be in the admission agreement because that document must be read, signed and dated prior to admittance and must be retained in the resident's file. Section 87568(f)(1) specifies that the licensee shall provide a copy of the current admission agreement to the resident and the responsible person, if any, or the conservator.

Reference to Section 87568(e) is added, which provides additional requirements for the admission agreement to avoid the redundancy of repeating that regulation.

Final Modification:

This section is being renumbered to Section 87725(a)(3) to maintain numerical consistency because the originally proposed Section 87725(a)(1) is being deleted. As a result of testimony, this section is being rewritten for clarity. Language is being added to say that the admission agreement shall inform the resident and the "resident's" responsible person, if any, or the conservator, that the facility features are described in the "facility's" plan of operation and "that the plan of operation is" available for review upon request. This section is being further amended to reflect the proposed renumbering of the cross-reference from Section 87725(a)(3) to Section 87725(a)(2). The word "are" is being removed because it is no longer grammatically necessary with the addition of the language "that the plan of operation is" available. The inclusion of additional nouns showing ownership, such as "resident's" responsible person and "facility's" plan of operation make the intent of the regulation clearer.

Sections 87725(a)(5) (Post-Hearing Modification -- Renumbered to Section 87725(a)(4).)

Specific Purpose:

The specific purpose of adopting this section is to require the licensee to maintain copies of all facility advertisements and marketing/promotional material that indicate the licensee provides special care, programming and/or environments for residents with dementia or

related disorders. In addition, the licensee shall maintain the information for a minimum of three years following discontinuance.

Factual Basis:

This section is necessary to implement Health and Safety Code Section 1569.33(d), requiring the Department to review the plan of operation, training logs, and marketing materials of an RCFE that advertises dementia special care, programming, and/or environments in order to monitor compliance with Health and Safety Code Sections 1569.626 and 1569.627. The requirement for the licensee to maintain the information for a minimum of three years following discontinuance is consistent with current regulation Section 87570(d).

Final Modification:

This section is being renumbered to Section 87725(a)(4) to maintain numerical consistency because the originally proposed Section 87725(a)(1) is being deleted. This section is being further amended to delete for clarity the phrase "following discontinuance" as it is unnecessary.

Section 87725(a)(5)(A) (Post-Hearing Modification -- Renumbered to Section 87725(a)(4)(A).)

Specific Purpose:

The specific purpose of adopting this section is to require the licensee to have all facility advertisements and marketing/promotional material, which indicate that the licensee provides dementia special care, programming, and/or environments, available to the public upon request.

Factual Basis:

This section is necessary to implement Health and Safety Code Section 1569.627 that specifies that the licensee of any RCFE that advertises or promotes dementia special care, programming, and/or environments shall ensure that this advertising information is provided to the public upon request.

Final Modification:

This section is being renumbered to Section 87725(a)(4)(A) to maintain numerical consistency because the originally proposed Section 87725(a)(1) is being deleted.

Section 87725(a)(5)(B) (Post-Hearing Modification -- Renumbered to Section 87725(a)(4)(B).)

Specific Purpose:

The specific purpose of adopting this section is to specify that the licensing agency shall be entitled to inspect, audit, remove if necessary, and copy upon demand during normal business hours all facility advertisements and marketing/promotional material that indicate the licensee provides dementia special care, programming, and/or environments.

Factual Basis:

This section is necessary because the licensing agency's access to facility advertisements and marketing/promotional material is necessary to carry out the functions of the licensing program. This language is consistent with Section 87570(e) pertaining to resident records.

Final Modification:

This section is being renumbered to Section 87725(a)(4)(B) to maintain numerical consistency because the originally proposed Section 87725(a)(1) is being deleted.

Section 87725(b)

Specific Purpose:

The specific purpose of adopting this regulation is to specify the necessary requirements for licensees who will discontinue advertising, promoting, or otherwise holding themselves out as providing special care, programming, and/or environments for residents with dementia or related disorders.

Factual Basis:

This regulation is necessary because Health and Safety Code Sections 1569.626, 1569.627, 1569.15(m), and 1569.33(d) establish requirements for licensees of RCFEs advertising dementia special care, programming, and/or environments. Since requirements are in place, licensees need regulations when discontinuing advertising dementia special care. The training requirements in Section 87725.1 and the requirements for the plan of operation in Section 87725(a)(3) [Post-Hearing Modification -- Renumbered to Section 87725(a)(2).] will no longer be required if the licensee is no longer advertising or promoting dementia special care. This is a change from what was in the plan of operation that was referred to in the admission agreement. Licensees must inform the licensing agency of changes in their plan of operation, as specified in Section 87222. Therefore, the public and the licensing agency must be informed about a discontinuance of advertising dementia special care.

Section 87725(b)(1)

Specific Purpose:

The specific purpose of adopting this section is to require licensees to provide written notification to the licensing agency and to the resident and the responsible person, if any, or the conservator, at least 30 calendar days prior to discontinuing advertising or promoting dementia special care, programming, and/or environments.

Factual Basis:

This section is necessary because the resident and the responsible person, if any, or conservator, have a right to know if the licensee chooses to discontinue advertising dementia special care, programming, and/or environments. Discontinuing advertising means the licensee is no longer required to include a brief narrative description of all the facility features pertaining to dementia special care in the plan of operation, as specified in Section 87725(a)(3) [Post-Hearing Modification -- Renumbered to Section 87725(a)(2).]. In addition, the licensee will no longer be required to have direct care staff meet the training requirements in Section 87725.1. The 30 calendar days notice is consistent throughout existing regulations, such as Sections 87561(b), 87568(c)(4), and 87113(c). "Calendar" days provides clarity.

Section 87725(b)(1)(A)

Specific Purpose:

The specific purpose of this section is to require licensees to state in their notification that they will no longer be advertising or promoting dementia special care, programming, and/or environments. Therefore, the licensee will no longer be required to meet the requirements in Section 87725, including the plan of operation requirements and the training requirements in Section 87725.1.

Factual Basis:

This section is necessary to clarify what the licensee must include in the required notification specified in Section 87725(b)(1). It is important that the licensee informs the licensing agency and the resident and the responsible person, if any, or the conservator of any changes. Licensees are required to inform the licensing agency of changes in their plan of operation, as specified in Section 87222. Discontinuing advertising means it is no longer a requirement for the licensee to include a brief narrative description of all the facility features pertaining to dementia special care in the plan of operation, as specified in Section 87725(a)(3) [Post-Hearing Modification -- Renumbered to Section 87725(a)(2).]. In addition, the licensee will no longer be required to have direct care staff meet the training requirements in Section 87725.1.

Section 87725(b)(1)(B)

Specific Purpose:

The specific purpose of adopting this section is to require the licensee to maintain a copy of the written notification, specified in Section 87725(b)(1), in each resident's records.

Factual Basis:

This section is necessary to meet the current regulation requirements on maintaining records. The written notification must contain information pertaining to any changes to the plan of operation and specify that training will no longer be required; therefore, the notification must be maintained in the resident's records. Section 87570 on resident records requires records to be current and complete and maintained in the facility or in a central administrative location available to facility and Department staff. Section 87570(b)(13) includes the admission agreement among those records. Section 87222 specifies that a current plan of operation shall be on file in the facility and shall be submitted to the licensing agency for approval.

Sections 87725(b)(2) and (b)(2)(A)

Specific Purpose:

The specific purpose of adopting these sections is to specify certain requirements for licensees who will discontinue advertising, promoting, or otherwise holding themselves out as providing special care, programming, and/or environments for residents with dementia or related disorders. Within 30 calendar days from notifying the licensing agency and the resident and the responsible person, if any, or the conservator, the licensee shall cease all advertisements pertaining to dementia special care and remove all written references that indicate that the licensee provides dementia special care, programming and/or environments. These references shall be removed from all promotional material, advertisements, and/or printed material, including admission agreements and the plan of operation.

Factual Basis:

These sections are necessary to ensure that licensees have procedures in place when choosing to discontinue advertising dementia special care, programming, and/or environments. Licensees cannot advertise anything they are no longer doing. Section 87725(b)(2)(A) clarifies that the written references indicating the licensee provides dementia special care, programming, and/or environments must be removed when the licensee discontinues advertising and the regulation gives examples of documents from which these references must be removed. The Department proposes that within 30 calendar days from notifying the licensing agency and the resident and the responsible person, if any, or the conservator, the licensee shall cease all advertisements pertaining to dementia special care and remove all written references that indicate that the licensee provides dementia special care, programming, and/or environments. The 30 calendar days time frame is used

for consistency and has been used throughout the RCFE regulations in various sections, such as Sections 87701.5(h), 87568(c)(4), and 87564.2(b)(3).

Section 87725.1 (Title)

Specific Purpose:

The specific purpose of this regulation is to adopt a new section and title and to add the training requirements for a licensee who is advertising dementia special care, programming, and/or environments.

Factual Basis:

This regulation is necessary to implement Health and Safety Code Section 1569.626 that establishes training requirements for direct care staff. The title clearly explains that Section 87725.1 is about training requirements that are only applicable if a licensee is advertising dementia special care, programming, and/or environments.

Section 87725.1(a)

Specific Purpose:

The specific purpose of adopting this regulation is to specify that licensees who advertise, promote, or otherwise hold themselves out as providing special care, programming, and/or environments for residents with dementia or related disorders shall ensure that all direct care staff, described in Section 87725(a)(2), who provide care to residents with dementia, meet certain training requirements.

Factual Basis:

This regulation is necessary to make it clear that all subsections under Section 87725.1(a) pertain only to training requirements for direct care staff if the licensee is advertising dementia special care, programming, and/or environments. This section is necessary to carry out Health and Safety Code Sections 1569.626 and 1569.33(d). Reference to Section 87725(a)(2) further clarifies and describes who direct care staff are and where they work.

Final Modification:

This section is being amended to reflect the proposed renumbering of the cross-reference from Section 87725(a)(2) to Section 87725(a)(1).

Section 87725.1(a)(1)

Specific Purpose:

The specific purpose of adopting this section is for the licensee to ensure that direct care staff complete six hours of orientation specific to the care of residents with dementia within

the first four weeks of working in the facility, or in designated areas of the facility where dementia special care is provided.

Factual Basis:

This section is necessary to meet the requirements in Health and Safety Code Section 1569.626(a), requiring six hours of resident care orientation within the first four weeks of employment. This section also clarifies that dementia care may take place in an entire facility or in a designated area of the facility, such as another building, wing, or floor.

Final Modification:

This section is being amended to delete the phrase ", or in designated areas of the facility where dementia special care is provided" to avoid redundancy and for clarity.

Sections 87725.1(a)(1)(A) through (a)(1)(A)2.

Specific Purpose:

The specific purpose of adopting these sections is to specify that the six hours of orientation for direct care staff shall be repeated if either of two circumstances occurs. The orientation must be repeated if an employee: (1) returns to work for the same licensee after a break in service of more than sixty consecutive calendar days or, (2) goes to work for another licensee to provide dementia special care.

Factual Basis:

These sections are necessary so that the licensee will know if direct care staff must repeat the six hours of orientation specific to care of residents with dementia. If an employee has a break in service of more than sixty consecutive calendar days and returns to work for the same licensee, the orientation must be repeated to provide an opportunity to be refreshed on what was taught earlier. If an employee goes to work for another licensee to provide dementia special care, he/she must complete the new facility's orientation to learn about the operation in a new facility and become acquainted with the care of residents in that particular facility.

Final Modification:

As a result of testimony, this section is being amended to increase the period of time before orientation is required to be repeated for a returning employee from sixty to 180 days. A break in service of more than 180 days is a more reasonable time period.

Section 87725.1(a)(1)(B)

Specific Purpose:

The specific purpose of adopting this section is to specify that six hours of orientation for direct care staff shall be separate from other training and be exclusively on the care of residents with dementia.

Factual Basis:

This section is necessary to comply with Health and Safety Code Section 1569.626(a), requiring the orientation time to be exclusive of any administrative instruction so that all six hours shall be devoted to the care of residents with dementia. This training is separate from other training requirements.

Sections 87725.1(a)(1)(C) and (a)(1)(C)1.

Specific Purpose:

The specific purpose of adopting these sections is to specify that the licensee may use various methods for instructing direct care staff on the six hours of orientation specific to residents with dementia, including, but not limited to the following: presenters knowledgeable about dementia, video instruction tapes, interactive material, books, and/or other materials approved by organizations or individuals specializing in dementia. This instruction may include up to two hours of mentoring and hands-on training from direct care staff who have met the training requirements specified in Section 87725.1.

Factual Basis:

These sections are necessary to comply with Health and Safety Code Section 1569.626(a) permitting the facility to utilize various methods of instruction including, but not limited to, preceptorship, mentoring, and other forms of observation and demonstration. Licensees may choose the training materials that work best for them. The Department proposes a cap of two hours on mentoring and hands-on training from direct care staff who have already met the training requirements.

Final Modification:

At the Department's discretion, Section 87725.1(a)(1)(C) is being amended for clarity and to make grammatical changes by adding a comma and changing the existing commas to semi-colons. A cross-reference to Section 87725.1(a)(2)(C) is added for clarity to specify where the regulations about organizations or individuals specializing in dementia are located.

As a result of testimony, Section 87725.1(a)(1)(C)1. is being amended for clarity. Language is being added to specify that the direct care staff providing the mentoring and hands-on training must have completed six hours of orientation specific to the care of residents with dementia and eight hours of in-service training on the subject of serving

residents with dementia as specified in Sections 87725.1(a)(1) and (2). The phrase "met the training requirements" is being deleted as a result of this change.

Section 87725.1(a)(1)(D) (Post-Hearing Modification)

Specific Purpose:

This section is being added to require the licensee to maintain in the personnel records documentation on the required orientation that includes the date(s), the hours provided, the names of staff in attendance, and the method(s) of instruction used.

Factual Basis:

This section is necessary to specify that the licensee is required to maintain in the personnel record documentation on the orientation received. A requirement to maintain training documentation was originally in proposed Section 87725.1(a)(2)(H). This was not the correct location since Section 87725.1(a)(2)(H) is under Section 87725.1(a)(2) that is specific to the required eight hours of in-service training; not the orientation. Documentation pertaining to orientation needs to go under Section 87725.1(a)(1). The listed documentation is necessary to provide verification of compliance with Sections 87725.1(a)(1)(A) through (C). Also, this addition is consistent with the requirements in Section 87566(c)(1)(B)2.

Section 87725.1(a)(2)

Specific Purpose:

The specific purpose of adopting this section is to specify that licensees who advertise dementia special care, programming, and/or environments must ensure that all direct care staff shall complete at least eight hours of in-service training on the subject of serving residents with dementia, within twelve months of working in the facility, or in designated areas of the facility where dementia special care is provided, and in each succeeding twelve-month period. Direct care staff hired prior to the effective date of Section 87725.1 shall complete the eight hours of in-service training within twelve months of this date and in each succeeding twelve-month period.

Factual Basis:

This section is necessary to comply with Health and Safety Code Section 1569.626(b) that requires all RCFE licensees who advertise dementia special care, programming, and/or environments to ensure that direct care staff who provide dementia special care meet the yearly eight hours of in-service training requirements on the subject of serving residents with dementia. Direct care staff don't have to have the training required in Section 87725.1 unless they actually provide care for residents with dementia and the licensee is advertising dementia special care, programming, and/or environments. Direct care staff must complete the eight hours of in-service training on the subject of serving residents with dementia

within twelve months of working in the facility, or in designated areas of the facility where dementia special care is provided, and every twelve months thereafter.

The Department is also clarifying procedures for direct care staff who have been providing such care before Sections 87725 and 87725.1 become effective and who are working for a licensee who is advertising dementia special care, programming, and/or environments. Proposed language clarifies when these individuals must be trained. This gives the licensing agency a time frame to ensure that all direct care staff are trained if the direct care staff are working in the facility, or in designated areas of the facility where dementia special care is provided; the licensee is advertising dementia special care, programming, and/or environments; and if direct care staff were hired prior to the effective date of Section 87725.1. This will prevent the licensing agency from having to calculate partial training hours that direct care staff received prior to the effective date of these regulations since those training hours were general and unlike the training regulations proposed in Section 87725.1.

Final Modification:

This section is being amended to delete the phrase ", or in designated areas of the facility where dementia special care is provided" to avoid redundancy and for clarity. This section is further amended to clarify the "effective date of Section 87725.1" by stating the actual effective date and to make grammatical corrections.

Sections 87725.1(a)(2)(A) through (a)(2)(A)6.

Specific Purpose:

The specific purpose of adopting these sections is to specify that annually the licensee must ensure that the eight hours of in-service training for direct care staff includes a minimum of two of the training topics, specified in Sections 87725.1(a)(2)(A)1. through (a)(2)(A)6., but all topics must be covered within a three-year period. Topics include the following: effects of medications on the behavior of residents with dementia; common problems such as wandering, aggression, and inappropriate sexual behavior; positive therapeutic interventions and activities such as exercise, sensory stimulation, activities of daily living, and social, recreational and rehabilitative activities; communication skills including resident and staff relations; promoting resident dignity, independence, individuality, privacy and choice; and end of life issues, including hospice.

Factual Basis:

These sections are necessary to ensure that the eight hours of in-service training per year on the subject of serving residents with dementia, as required by Health and Safety Code Section 1569.626(b), include some of the more important topics concerning dementia special care. The statute requires consultants and trainers to have some expertise on dementia special care. The topics specified in Section 87725.1(a)(2)(A) are meant to go into greater detail than the training required by Sections 87565(c) and 87724(c)(3). The Department reviewed training topics from other states' regulations on dementia in assisted

living facilities. These states include Virginia (Virginia Department of Social Services, Standards and Regulations for Licensed Adult Care Residences, 22 VAC 40-71-700); Maine (Regulations Governing the Licensing and Functioning of Assisted Living Facilities, Chapter IV, Level II, 29070); Washington (Dementia Care Pilot & Expansion Projects in Boarding Homes, Exhibit A, pages 7, 14, 15, and 16); Idaho (Rules for Licensed Residential and Assisted Living Facilities in Idaho, IDAPA 16.03.22, Sections 700.05, .06, and .07); and Arizona (Arizona Department of Health Services Regulations, Title 9, Chapter 10, Article 7, R9-10-707). Ideas also came out of the dementia forum workgroup and research on Alzheimer's Disease and dementia. The Department believes that it is reasonable for all of the topics listed to be covered in a three-year period. Direct care staff should understand how dementia progresses and the changes a resident will have as his/her condition worsens.

Section 87725.1(a)(2)(B)

Specific Purpose:

The specific purpose of adopting this section is to inform the licensee that training may be provided at the facility or offsite and may include a combination of observation and practical application.

Factual Basis:

This section is necessary to comply with Health and Safety Code Section 1569.626(b), which permits the training for direct care staff to be provided at the facility or offsite and allows this training to include a combination of observation and practical application. This training is required if a licensee advertises dementia special care, programming, and/or environments.

Section 87725.1(a)(2)(C)

Specific Purpose:

The specific purpose of adopting this section is to require the licensee to ensure that the training is developed by, or in consultation with, individuals or organizations with expertise in dementia care and with knowledge on the training topic areas specified in Section 87725.1(a)(2)(A).

Factual Basis:

This section is necessary to comply with Health and Safety Code Section 1569.626(b) which requires that the training for direct care staff is developed in consultation with individuals or organizations or by an outside source with expertise in dementia care. For clarity, reference is made to the required training topics that are specified in Section 87725.1(a)(2)(A). Since these topics are required, the individuals/organizations must have knowledge about these topics in order for training to be developed. Trainers or consultants must have expertise in dementia care. Educational qualifications are specified in Section 87725.1(a)(2)(E) for trainers. Trainers must be able to present the material and answer

questions. Consultants may be phoned informally and may be from an organization specified in Section 87725.1(a)(2)(C)1. Their organization affiliation and/or educational and professional qualifications specific to dementia will be documented as specified in Section 87725.1(a)(2)(D)3.

Final Modification:

This section is being amended to make grammatical corrections to clarify that there may be one or more individual(s) or organization(s) with expertise in dementia care.

Section 87725.1(a)(2)(C)1.

Specific Purpose:

The specific purpose of adopting this section is to provide some examples of organizations or individuals that specialize in dementia care so that licensees who advertise dementia special care, programming, and/or environments can utilize these organizations/individuals for consultation, if they choose, to meet the training requirements in Section 87725.1(a)(2).

Factual Basis:

This section is necessary to provide information to the licensees so that they can meet the training requirements specified in Section 87725.1(a)(2). Health and Safety Code Section 1569.626(b) requires dementia training to be developed in consultation with individuals or organizations or by an outside source with expertise in dementia care. Providing a list of organizations will assist the licensee.

Final Modification:

A new Section 87725.1(a)(2)(C)1.(i) is being added to clarify that if the consultant and trainer are the same person(s), the documentation requirements specified in Sections 87725.1(a)(2)(D) and (F) shall both be met. A consultant may develop the training, but may not provide the training; however, a consultant is allowed to train if certain requirements, as specified in Sections 87725.1(a)(2)(E)1. and 2.(i), are met. Consultants, RCFE administrators, or direct care providers for individuals with dementia may be the trainer if they meet the specified education and experience requirements in Section 87725.1(a)(2)(E). There are separate documentation requirements for the consultant, as specified in Section 87725.1(a)(2)(D), and for the trainer, as specified in Section 87725.1(a)(2)(E). Both requirements must be met if the consultant is also the trainer.

Sections 87725.1(a)(2)(D) through (a)(2)(D)3.

Specific Purpose:

The specific purpose of adopting these sections is to require the licensee to maintain specified documentation for the consultant(s) described in Section 87725.1(a)(2)(C). This documentation includes the following: the name, address, and telephone number of the

consultant(s); the date(s) when consultation was provided; and the organization affiliation (if any), which was specified in Section 87725.1(a)(2)(C)1. and/or educational and professional qualifications specific to dementia.

Factual Basis:

These sections are necessary to be consistent with other record-keeping requirements. Health and Safety Code Section 1569.33(d) requires the Department to review training logs of any RCFE that advertises dementia special care, programming, and/or environments. Health and Safety Code Section 1569.626(b) requires training to be developed in consultation with individuals or organizations with specific expertise in dementia care. Therefore, it is important to have documentation on the consultant's organization affiliation and/or educational and professional qualifications specific to dementia. The Department is proposing that licensees maintain certain basic information about consultants to ensure requirements are being met. The name, address, and telephone number will allow the licensing agency to contact the consultant to verify information. The dates are necessary for the licensee to calculate the documentation retention time frame proposed in Section 87725.1(a)(2)(G) and to make sure the dates correspond with training. For clarification and ease of use a cross-reference is made to Section 87725.1(a)(2)(C)1., which gives examples of organizations that specialize in dementia care and a cross-reference is made to Section 87725.1(a)(2)(C), which provides more information on who could develop or provide consultation for the training.

Final Modification:

Section 87725.1(a)(2)(D) is being amended to clarify that it is the licensee who shall maintain the required documentation.

Section 87725.1(a)(2)(D)1. is being amended to delete the words "of consultant(s)." This language is unnecessary since Section 87725.1(a)(2)(D) already refers to documentation for the consultant.

Section 87725.1(a)(2)(D)2. is being amended by deleting the word "and" because another subsection is added.

Section 87725.1(a)(2)(D)3. is being amended to make a grammatical change by adding a comma before the phrase "as specified in Section 87725.1(a)(2)(C)." The cross-reference is corrected to read Section 87725.1(a)(2)(C). This section is further amended to delete the period and add "; and" to connect this section with a new subsection.

A new Section 87725.1(a)(2)(D)4. is being added to specify that documentation includes "the training topics, specified in Section 87725.1(a)(2)(A), for which consultation was provided." This regulation is necessary because direct care staff are required to have a minimum of two of the listed training topics provided annually, but all topics must be covered within a three-year period. This information must be documented to ensure that all requirements are being met.

Section 87725.1(a)(2)(E)

Specific Purpose:

The specific purpose of adopting this section is to require licensees to ensure that trainer(s), who will be providing the eight hours of in-service training on the subject of serving residents with dementia to direct care staff, complete a minimum of three units on psychology of aging.

Factual Basis:

This section is necessary so that the qualifications for the trainer(s) are specified. Specific qualifications are necessary for the licensing agency to ensure that regulations are followed. This section is necessary to comply with Health and Safety Code Section 1569.626(b), that requires the training for direct care staff to be developed in consultation with individuals or organizations or by an outside source with expertise in dementia care. A psychology of aging class is included in the transcripts of anyone obtaining a two-year degree or a two-year certificate in the field of gerontology. This class is easily accessible statewide and is on line nationwide for \$33.

Final Modification:

As a result of testimony, the requirement for the trainer to have completed a minimum of three units on psychology of aging is being deleted. Testimony provided examples where facilities have hired trainers with other educational experience than psychology of aging and where some trainers have had years of experience in providing professional services to residents with a primary diagnosis of dementia and have taken other college courses with an emphasis on dementia. These examples showed that it is just as important for experience requirements to be considered as educational requirements and that limiting an educational course to just three units on psychology of aging is too restrictive. This section is being amended to require trainers to meet the education and experience requirements specified in the following sections.

Section 87725.1(a)(2)(E)1.

Specific Purpose:

The specific purpose of adopting this section is to specify that a licensee and/or employee(s) of the facility may provide the eight hours of in-service training on the subject of serving residents with dementia to direct care staff if he/she has a minimum of three units on psychology of aging.

Factual Basis:

This section is necessary to clarify that a licensee and/or employee(s) of an RCFE may provide the training for dementia special care if he/she has completed a minimum of three units on psychology of aging. Licensees who specialize in caring for residents with

dementia may already have hired staff who have a minimum of three (3) units on psychology of aging for the purpose of developing training and enhancing programs and policies. The workgroup commented that it was acceptable for a licensee and/or employee(s) of an RCFE to provide training as long as they have some expertise on dementia special care.

Final Modification:

As a result of testimony, the language in Section 87725.1(a)(2)(E)1. is being deleted and new language is added at Section 87725.1(a)(2)(E)1. to specify the educational requirements to become a trainer. The Department contacted individuals in various professional capacities, including individuals familiar with education and the university system and educational providers, to provide input in the development of these regulations. This amendment is necessary so that the licensing program analyst has specific information for which to look when verifying that the training requirements are being met. Provider organizations who provide training often give eight hours continuing education credit per training. The administrator recertification requirements in Section 87564.3 require administrators to submit proof of completion of at least eight hours of the 40-hour continuing education requirement in subjects related to serving residents with dementia. Since not everyone will take continuing education classes, classes from accredited educational institutions are also acceptable. The bare minimum requirement is provided for each so that it will not be burdensome for the licensee to get trainers who meet the requirements, but will ensure that the trainer has more education than the direct care staff they will be training. The use of continuing education hours and units from accredited educational institutions are necessary so that the education information can be verified. Since units may be quarter units, "or the equivalent" is added to ensure their inclusion.

Section 87725.1(a)(2)(E)1.(i) is being added for clarification to help the licensing program analyst evaluate whether the requirements are being met by giving examples of acceptable instruction relevant to caring for individuals with dementia. Examples of acceptable instruction include classes in aging, gerontology, geriatrics, and/or psychosocial needs of the elderly.

Section 87725.1(a)(2)(E)2. (Post-Hearing Modification)

Specific Purpose:

Section 87725.1(a)(2)(E)2. is being added to specify the experience requirement options to be a trainer.

Section 87725.1(a)(2)(E)2.(i) is added to specify that the experience requirement may be met by "Current employment as a consultant with expertise in dementia care, as specified in Section 87725.1(a)(2)(C)."

Section 87725.1(a)(2)(E)2.(ii) is added to specify that the experience requirement may be met by "Two years full-time experience, or the equivalent, within the last four years, as an RCFE administrator or as a direct care provider for individuals with dementia."

Factual Basis:

Section 87725.1(a)(2)(E)2. is necessary to specify the experience requirements needed to be a trainer.

Section 87725.1(a)(2)(E)2.(i) is necessary to give the option for the consultant with expertise in dementia to be a trainer. If an individual has enough knowledge to provide consultation, then that individual will be able to train on the material and answer questions.

Section 87725.1(a)(2)(E)2.(ii) is necessary for consistency with similar language in Section 87565(c)(3)(C). The language requiring the two years of full-time experience to be "within the last four years" is necessary because dementia special care is a specialized field and more recent experience is needed. In addition, Section 87564.3 requires administrators to complete at least 40 classroom hours of continuing education during each two-year certification period, so in this two years the administrator will have received more education. Two years full-time experience would also be adequate for direct care providers of individuals with dementia as long as they also meet the education requirements.

Sections 87725.1(a)(2)(F) through (a)(2)(F)4.

Specific Purpose:

The specific purpose of adopting these sections is to require licensees to maintain specified documentation for the trainer(s) described in Section 87725.1(a)(2)(E). The documentation must include the following: the name, address, and telephone number of the trainer(s); the topics/subject matter taught; the dates/hours of training provided; and an official transcript from an accredited educational facility showing three (3) completed units on psychology of aging.

Factual Basis:

These sections are necessary to ensure that licensees maintain specified documentation for the trainer(s) described in Section 87725.1(a)(2)(E) and to be consistent with other record-keeping requirements, including proposed Section 87725.1(a)(2)(D). Health and Safety Code Section 1569.33(d) requires the Department to review training logs of any RCFE that advertises or promotes dementia special care. Health and Safety Code Section 1569.626(b) requires training to be developed in consultation with individuals or organizations with specific expertise in dementia care. The Department is proposing that licensees document some basic information for the trainer(s) to ensure that requirements are being met.

Other states' assisted living regulations were reviewed, including Washington (Dementia Care Pilot & Expansion Projects in Boarding Homes, Exhibit A, page 8) and Arizona (Arizona Department of Health Services Regulations, Title 9, Chapter 10, Article 7, R9-10-706), for ideas for documentation of training. Since the Department is proposing that the trainers complete three units on psychology of aging, then there needs to be documentation showing an official transcript from an accredited educational facility showing these

completed units. A name, address, and telephone number will allow the licensing agency to contact the trainer with questions. The licensing agency can verify that the topics/subject matter correspond with those proposed in Section 87725.1(a)(2)(A). In addition, the licensing agency can verify that the dates correspond with the documentation in the employees' training files and that the hours meet the requirements in Section 87725.1(a)(2). The dates/hours of training provided will help the licensee calculate the documentation retention time frame as proposed in Section 87725.1(a)(2)(G).

Final Modification:

Section 87725.1(a)(2)(F) is being amended to clarify that it is the licensee who shall maintain the required documentation. In addition the word "for" is being replaced with "on" to make it more grammatically correct since the documentation is on the trainer.

Section 87725.1(a)(2)(F)1. is being amended to delete the words "of trainer(s)" because this language is unnecessary since Section 87725.1(a)(2)(F) already refers to documentation on the trainer(s).

Section 87725.1(a)(2)(F)3. is being amended to delete the word "and" since it is no longer needed because another subsection is being added.

As a result of testimony, language originally proposed at Section 87725.1(a)(2)(F)4. is deleted. Proposed amendments to Section 87725.1(a)(2)(E) make this language no longer pertinent. New proposed language at Section 87725.1(a)(2)(E) adds other acceptable classes. New proposed language at Section 87725.1(a)(2)(F)4. requires the licensee to maintain documentation on the trainers that includes a "Notation that indicates which of the criteria for experience the trainer meets, as specified in Section 87725.1(a)(2)(E)2., and maintain verification of qualifying criteria. . . ." This section is necessary to ensure that documentation to verify the qualifying criteria is available for review and to show whether the trainer is a consultant, RCFE administrator, or a direct care provider. The word "and" is added after Section 87725.1(a)(2)(F)4. to be grammatically correct.

Section 87725.1(a)(2)(F)5. is being added to be consistent with amendments in Section 87725.1(a)(2)(E)1. Since there are now education requirements for the trainer in proposed Section 87725.1(a)(2)(E)1., the licensee must show proof of completion of these educational requirements.

Sections 87725.1(a)(2)(F)5.(i) and (ii) are being added to clarify what proof of completion of the educational requirements are acceptable. Section 87725.1(a)(2)(F)5.(i) specifies that if the educational hours/units are obtained through an accredited educational institution, documentation shall include a copy of a transcript or official grade slip showing a passing mark. Section 87725.1(a)(2)(F)5.(ii) clarifies that if the educational hours/units are obtained through continuing education, documentation shall include a transcript or official grade slip showing a passing mark, if applicable, or a Certificate of Completion. Continuing education units are sometimes recorded in hours. Professional credit, hours awarded for completing courses offered by licensing board-approved providers (these may include colleges and universities as well as private businesses that provide trainings), is

recorded in hours. However, a Certificate of Completion could be handed out at the end of a continuing education training session.

Section 87725.1(a)(2)(G)

Specific Purpose:

The specific purpose of adopting this section is to require the licensee to retain the documentation specified in Sections 87725.1(a)(2)(D) and (a)(2)(F) for a minimum of three years after the date consultation services/training are provided.

Factual Basis:

This section is necessary for consistency with current Sections 87566(e) (personnel records) and 87570(d) (resident records). Reference to Sections 87725.1(a)(2)(D) and 87725.1(a)(2)(F) specifies which documents must be retained. These sections refer to documentation that shows the dates the consultation services/training was provided. That gives a beginning date so that the licensee will know when the three-year retention period for document maintenance begins.

Final Modification:

At the Department's discretion, this section is being amended to be consistent with language in regulation Section 87566(g) and to make grammatical corrections. The word "specified" is being changed to "required," the language "a minimum of" is changed to "at least," the word "after" is changed to "following," and the word "are" is changed to "were." Part of the cross-reference, "(a)(2)" before (F) is being removed as it is not needed and for consistency with other changes.

Section 87725.1(a)(2)(G)1.

Specific Purpose:

The specific purpose of adopting this section is to specify that the licensing agency shall be entitled to inspect, audit, remove if necessary, and copy the documentation specified in Sections 87725.1(a)(2)(D) and (a)(2)(F) upon demand during normal business hours.

Factual Basis:

This section is necessary because the licensing agency's access to documentation pertaining to training is necessary to carry out the functions of the licensing program. The language is consistent with Section 87570(e) pertaining to resident records and provides clarity. Sections 87725.1(a)(2)(D) and (a)(2)(F) are cross-referenced in Section 87725.1(a)(2)(G) to indicate the type of training documentation that must be retained to show that the licensee has met the statutory and regulatory requirements.

Section 87725.1(a)(2)(H)

Specific Purpose:

The specific purpose of adopting this section is to require the licensee to maintain the documentation verifying completion of the training required by Section 87725.1 in the personnel records for direct care staff, as required by Section 87566(b).

Factual Basis:

This section is necessary to ensure that the licensee documents the completion of the required training for dementia special care in the personnel records for direct care staff so that the licensing agency can verify that training requirements are being met. Reference to Section 87725.1 clarifies the training requirements for a licensee who advertises dementia special care, programming, and/or environments. For further clarification, the Department makes reference to Section 87566(b), which lists the specific information that must be included in the personnel records as documentation to verify completion of the required training.

Final Modification:

At the Department's discretion, originally proposed Section 87725.1(a)(2)(H) is being deleted because it is inaccurate and new language is being added. The documentation requirements for the orientation required in Section 87725.1(a) are specified separately under Section 87725.1(a)(1)(D). New language in Section 87725.1(a)(2)(H) specifies that the licensee shall maintain in the personnel records documentation on the in-service training required in Section 87725.1(a)(2) for direct care staff and include the training topic(s) covered, as required in Section 87725.1(a)(1)(A). This section is necessary to ensure that the requirements are being met. A minimum of two of the listed training topics must be covered annually, and all topics must be covered within a three-year period. The proposed regulation in Section 87725.1(a)(2)(H) also serves as a reminder that the in-service training must be documented in the personnel records.

Section 87725.2 (Title)

Specific Purpose:

The specific purpose of this regulation is to adopt a new section and title so that the Department can place into regulation the requirements for licensees to follow if they are already advertising dementia special care, programming, and/or environments upon the effective date of these regulations.

Factual Basis:

This regulation is necessary to provide the licensees with a time frame to meet the requirements of Health and Safety Code Sections 1569.15(m), 1569.626 and 1569.627 if they advertise dementia special care, programming, and/or environments. For clarity, a new

section number is adopted to deal specifically with licensees who are already advertising dementia special care, programming, and/or environments upon the effective date of regulation Sections 87725 and 87725.1. All section numbers beginning with Section 87725 pertain only to licensees who are advertising dementia special care, programming, and/or environments. In addition, the Department proposes one location in the regulations for the steps and time frame for licensees who are already advertising dementia special care, programming, and/or environments upon the effective date of these regulations. This section can be removed 121 days from the date that these regulations become effective because this section will no longer be pertinent; the regulations in Sections 87725 and 87725.1 will stand alone at that time.

Final Modification:

The section title is being amended to replace "Upon Effective Date of Regulations" with "As of February 1, 2004" to clarify the actual effective date. Also, a grammatical correction is being made.

Section 87725.2(a)

Specific Purpose:

The specific purpose of adopting this section is to specify that licensees who will no longer advertise, promote, or otherwise hold themselves out as providing dementia special care, programming, and/or environments shall meet all of the requirements of Section 87725(b) within 120 calendar days from the effective date of Sections 87725 and 87725.1.

Factual Basis:

This section is necessary because when these regulations become effective, they will impact licensees who are already advertising dementia special care, programming, and/or environments. Some time frame must be in place to allow licensees to meet the requirements in Sections 87725 and 87725.1. Without time to meet the requirements, the regulations would cause undue hardship for licensees. Since licensees will learn about the requirements of Sections 87725 and 87725.1 upon the effective date of these regulations, they will not have time to prepare in advance to meet these requirements. Also, licensees may not have access to these new regulations immediately. Section 87725.2 ensures there is a firm timeline for the licensing agency to enforce the regulations as the licensee must meet all of the requirements of Section 87725(b) within 120 calendar days from the effective date of Sections 87725 and 87725.1.

The licensee may make a decision to quit advertising after he/she becomes aware of the additional requirements specified in Sections 87725 and 87725.1. Additional requirements are proposed for licensees who want to advertise dementia special care, programming, and/or environments.

Final Modification:

This section is being amended to replace "within 120 calendar days from the effective date of Sections 87725 and 87725.1" with "no later than June 1, 2004" to clarify the actual date.

Section 87725.2(b)

Specific Purpose:

The specific purpose of adopting this section is to specify that licensees who will continue to advertise, promote, or otherwise hold themselves out as providing dementia special care, programming, and/or environments shall meet the requirements in Sections 87725(a) and 87725.1 upon their effective date; however, exceptions are provided.

Factual Basis:

This section is necessary because when these regulations become effective, they will impact licensees who are already advertising dementia special care, programming, and/or environments. Some time frame must be in place to allow licensees to meet the requirements in Sections 87725(a) and 87725.1, because without additional time to meet the requirements, the regulations would cause undue hardship for the licensee. This section ensures there is a firm timeline for enforcement by the licensing agency.

Final Modification:

This section is being amended to replace "upon their effective date" with "as of February 1, 2004" to clarify the actual effective date. The word "meet" is being replaced with "comply with" to clarify, by using stronger language, that requirements must be met.

Sections 87725.2(b)(1) and (b)(1)(A)

Specific Purpose:

The specific purpose of adopting these sections is to require the licensee to submit to the licensing agency the additional requirements for the plan of operation that have not been submitted previously, as described in Section 87725(a)(3). The licensee must submit this information within 120 calendar days from the effective date of Sections 87725(a) and 87725.1.

Factual Basis:

These sections are necessary to allow the licensee additional time to meet the requirements in Section 87725(a)(3). It is not the intent of the Department to have the licensee do more work than is necessary. The licensee only needs to submit to the licensing agency the additional requirements for the plan of operation that are described in Section 87725(a)(3). These requirements are necessary as specified in Health and Safety Code Section 1569.627. The licensee who has been advertising dementia special care, programming, and/or

environments upon the effective date of these regulations will have submitted a plan of operation, as specified in Section 87222. To meet statutory requirements in Health and Safety Code Section 1569.627, the licensee must submit a description of the facility features specified in Section 87725(a)(3).

Final Modification:

Section 87725.2(b)(1) is being amended to replace "Within 120 calendar days from the effective date of these sections" with "No later than June 1, 2004" to clarify the actual date. Section 87725.2(b)(1)(A) is being amended to reflect the proposed renumbering of the cross-reference from Section 87725(a)(3) to Section 87725(a)(2).

Section 87725.2(b)(1)(B)

Specific Purpose:

The specific purpose of adopting this section is to ensure that within 120 calendar days from the effective date of Sections 87725(a) and 87725.1, the licensee shall amend the admission agreement to inform the resident and the responsible person, if any, or the conservator, that the facility features, as specified in Section 87725(a)(3), are described in the plan of operation, and are available for review upon request. This section specifies that requirements in Sections 87568(e) and (f) shall also be met.

Factual Basis:

This section is necessary to allow licensees more time to meet additional requirements if they are already advertising dementia special care, programming, and/or environments upon the effective date of regulation Sections 87725 and 87725.1. Proposed Section 87725(a)(4) [Post-Hearing Modification - Section 87725(a)(4) is renumbered to Section 87725(a)(3).] specifies that the admission agreement shall inform the resident and the responsible person, if any, or the conservator, that the facility features, as specified in Section 87725(a)(3), are described in the plan of operation and are available for review upon request. The plan of operation must be current since it is referred to in the admission agreement and the resident and the responsible person, if any, or the conservator, can request to review it at any time. The proposed regulations allow the licensee an additional 120 calendar days time frame to meet the requirements specified in this Section 87725.2(b)(1)(B) so that there will be no hardship for the licensee to meet these requirements. Health and Safety Code Section 1569.627 specifies that the special features of the facility in the plan of operation must be provided to the public by the facility upon request. Language specifies that requirements in Sections 87568(e) and (f) shall be met for clarification and to remove the need to repeat language already in the regulations pertaining to attachments or modifications of an admission agreement.

Final Modification:

This section is being amended to reflect the proposed renumbering of the cross-reference from Section 87725(a)(3) to Section 87725(a)(2).

b) Identification of Documents Upon Which Department Is Relying

SB 1113 (Haynes) - enrolled (2000)

SB 1113 Senate Bill - Veto

Statement of Decision, California Assisted Living Facilities Association v. California Department of Social Services (CDSS); San Francisco Superior Court (1/29/01)

AB 1753 (Romero), Chapter 434, Statutes of 2000

State Assisted Living Policy: 2000, by Robert Mollica, p. 30

Arizona Department of Health Services Regulations, Title 9, Chapter 10, Article 7, R9-10-706 and R9-10-707

Rules for Licensed Residential and Assisted Living Facilities in Idaho, IDAPA 16.03.22, Sections 700.05, .06, and .07

Maine Regulations Governing the Licensing and Functioning of Assisted Living Facilities Chapter 4, Level II, Sections 27050 through 27100 and 29070

Mississippi State Department of Health Regulations, Part I, General, Alzheimer's Disease/Dementia Care Unit, Sections 104.1, 107.1, and 107.2

North Carolina Rules for the Licensing of Adult Care Homes, Title 10, Subchapters 42C and D, Sections .1503, .1905, and .2005

Oregon Administrative Rules, Chapter 411, Division 057, Section 0040

Texas Department of Human Services, Licensing Standards for Assisted Living Facilities, Title 40, Part 1, Chapter 92, Subchapter C, Section 92.53(g)

Virginia Department of Social Services, Standards and Regulations for Licensed Adult Care Residences, 22 VAC 40-71-40, 40-71-260, and 40-71-700

Washington State Department of Social and Health Services, "Dementia Care Pilot & Expansion Projects in Boarding Homes plus Exhibit A, pp. 4 – 16

Resources for definition of mild cognitive impairment - Alzheimer Society, Alzheimer's Disease Center, and Dr. Steven Ferris of the Silberstein Aging and Dementia Research Center

c) Local Mandate Statement

These regulations do not impose a mandate upon local agencies or school districts. There are no state-mandated local costs in these regulations which require state reimbursement under Section 17500, et seq. of the Government Code.

d) Statement of Alternatives Considered

CDSS has determined that no reasonable alternative considered would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

CDSS has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would lessen any adverse impact on small business.

There are no known alternatives. These proposed regulations implement revised dementia care regulations as required by the Governor's veto message of SB1113 (Haynes) and Sections 1569.15(m), 1569.33, 1569.626, and 1569.627 [AB 1753 (Romero), Chapter 434, Statutes of 2001] of the Health and Safety Code.

e) Statement of Significant Adverse Economic Impact On Business

CDSS has determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Testimony and Response

These regulations were considered as Item #1 at the public hearing held on January 15, 2003 in Sacramento, California. The public hearing was preceded by a 45-day public comment period from November 29, 2002 to 5:00 p.m. January 15, 2003. Testimony was presented at the public hearing by the following:

Jackie Wynne McGrath, Alzheimer's Association (AA) *
Charles W. Skoien, Jr., Community Care Association (CCA)

* Submitted written comments in addition to public hearing testimony.

Also, written testimony was received during the public comment period from the following:

Veronica L. Higgins, Ronjon and Associates, LLC (Ronjon)
Paul Reimer, Reimer Christian Senior Care (RCSC)
Heather S. Harrison, California Assisted Living (CALA)
Eric Carlson, National Senior Center Law Center (NSCLC)
Patricia McGinnis, California Advocates for Nursing Home Reform (CANHR)
Jackie Wynne McGrath, Alzheimer's Association (AA) *
Charles W. Skoien, Jr., Community Care Association (CCA)

Summarized comments received and the Department's responses to those comments are grouped first by general comments followed by specifically identified section comments. The acronym of the commenter (in parentheses) follows each comment.

General

1. Comment:

"I'm Jackie McGrath and I'm representing the California Council of the Alzheimer's Association which represents all of the California chapters. On behalf of these chapters, I wish to commend the Department for recognizing the need to develop new regulations in the unique and ever-changing area of dementia care. The Alzheimer's Association especially appreciates your diligence in seeking input from all

stakeholders, and your sincere attempt to incorporate many of our suggestions, questions and concerns.

"As an organization, we are committed to ensuring that all persons with dementia receive the highest quality of care, in the least restrictive, safe environment. We are committed to assisting persons with dementia and their families over the full course of the disease, and we support an evolving plan of care that is responsive to changes in condition each step of the way. We reviewed your proposed regulations with these commitments in mind.

"We applaud the removal of the waiver program as it supports the importance of all residential care facilities for the elderly being sensitive to dementia issues. As you are aware, there are many individuals who are admitted to assisted living environments who do not have dementia at the time of admission but who may later experience progressive cognitive impairments. It is vitally important that all staff be aware of the signs and symptoms of dementia in a resident and have the ability to adapt a plan of care to reflect an individual's changing needs. In other words, all residential care facilities should be 'dementia capable' –skilled in recognizing changes and working with persons with dementia, as well as knowledgeable about the kinds of services and interventions that may be helpful to these persons.

"After having various professionals and family members within our organization carefully review these regulations, I submit the following comments on behalf of the California Council of the Alzheimer's Association. Our comments are divided into three categories: major concerns and requested changes, secondary concerns and recommended changes, and other comments/questions." (AA)

Response:

The Department appreciates this testimony.

2. Comment:

"First of all I would like to thank the Department and staff basically for doing a pretty good job except I would like to see a [more concised ?] into a dementia division within the regulations themselves to make them more user friendly. To go from one area of the regulations to the area of regulations, staffing, or training, and medications. And I took, and I'll give you a copy of one of the district office's of community care facilities developed an outline of regulation guides and these guides are basically about 75 different, different [words ?] in the guide and you can basically look at, like, Administration, you can take one, two, three, four, five, eight areas of the regulations, let's say, that talks about administration. If you want to look at allowable health conditions, you get four or five areas. You have to go from one area to another and really it's a hardship on our facilities because it's not really user friendly as a part of it. I kind of highlighted some of it and I would like to have asked you to get another ten days and I'll put everything in writing, which I always do, but that's okay.

"The regulations, and I'll just bring up issues that I think that, the cost of, to facilities, the Department says there no, [basically ?] costs on page 3. The Department says the Small Business Impact Statement has determined that there is an impact on small businesses. It really doesn't say there is an impact, but if you look at the training program you're going to have to ask, the eight hours and the four hours, there is an additional cost to these facilities and especially if the State's in this kind of bad shape financially - We don't mind the training. We always have praised training and the initiative to do training but there is a cost. Somehow, your Department, the Governor's office, doesn't seem to want to pass on the, even the SSI/SSP, for the next three years. We're still going to lose about \$70 per resident in our facilities.

"There are some duplications which I'll be happy to talk to the Department about that we're concerned with. Otherwise I would like to offer a user friendly documentation that we give to our members which basically goes over everything that we, is required in the Rameros Bill. It talks about the assessment. It talks about the training. It's all concise into a user friendly package. Employees' responsibility to involve themselves in the community, training of staff and activities, development of the activity program itself and then activities, and overall activities they should have, psychoactive medications, how they should react to those, fire clearances and disaster plan, staff responsibilities, admission policies and all the personal rights and the admission policies required by the Community Care Licensing. This is a package that we give to our members and really, it puts it in one user friendly package and I present that to you.

"I want to thank the Department and hopefully that, I don't know if you have to go back to legislation, but develop a package of regulations that would be user friendly, not just, you have to go have an attorney go from one end of the regulations to the other end in to interpretate, interpret. On behalf of our association, Community Resident's Care Association of California, I thank the Department and thank you, Tony.

"Oh, my name is Charles W. Skoien, Jr. representing Community Care Association." (CCA)

Response:

The Department appreciates this testimony. The testifier mentioned that the regulations are not user friendly. All of Section 87724 applies to licensees who accept or retain residents diagnosed by a physician to have dementia. Sections 87725, 87725.1, and 87725.2 pertain to licensees who advertise that they provide dementia special care, programming, and/or environments. The Department cross-references other sections throughout the regulations that contain general information that is not specific to a licensee who has residents with dementia. The Department has tried to make the cross-referencing more user-friendly by putting the title of the section next to the section number.

The Department is currently reformatting the RCFE regulations into a more user-friendly format. The sequence of the regulation sections will reflect the six

comprehensive visit guidelines used by the Senior Care Licensing Program Analysts when they conduct facility visits.

The testifier had a concern that there are costs associated with training. Smaller facilities may not have employees specifically to do the mandated training, while larger facilities often have licensed medical professionals on the payroll. The requirement for the training and the number of hours required for this training was specified in the Romero Bill, AB 1753, Chapter 434, Statutes of 2000. Since this is statute, the Department is adding this requirement to the regulations governing licensees of facilities that advertise dementia special care, programming, and or environments.

Section 87101(d)(4) and (m)(1) (Post-Hearing Modification - Section 87101(m)(1) is being renumbered to Section 87101(m)(2).)

3. Comment:

"87101(d)(4) and (m)(1) Definition of 'dementia' and 'mild cognitive impairment' These definitions are vague and may [tend] to overlap. According to the proposed definitions, an individual is deemed to have 'dementia' if their condition interferes with their ability to perform activities of daily living or carry out social or occupational activities. Yet someone with 'mild cognitive impairment' as defined might well have a condition (memory impairment) that interferes with their ability to carry out a social or occupational activity – even if they could perform all ADLs. Also, what if someone can bathe, dress, groom, toilet and feel himself, but can't manage medications? Is that an ADL that makes them 'demented'? Additional clarification is needed.

"CALA recommends additional clarification with the goal of developing regulations that recognize that differences in level of functioning call for different approaches to care and supervision. An individual with a very early Alzheimer's diagnosis should not necessarily be subject to the same level of restrictions placed on those with more advanced stages of the disease. (CALA)

Response:

The Department appreciates this testimony. Renumbered Section 87101(m)(2) is being amended in response to public testimony for clarification to indicate that "mild cognitive impairment" refers to people whose cognitive abilities are in a "conditional state" between normal aging and dementia. The amended definition is broader. The definition is a consensus of many experts including the Alzheimer Society, The Alzheimer's Disease Center, and Dr. Steven Ferris of the Silberstein Aging and Dementia Research Center.

The definition for "dementia" in Section 87101(d)(4) was provided in part by the workgroup and in part by the National Academy For State Health Policy's State Assisted Living Policy: 2000, by Robert Mollica. The definition encompasses part of the Alzheimer's Association's definition. There needs to be a definition broad enough to explain what is meant by the terms "dementia" and "mild cognitive impairment," but

not so narrow that it only fits specific situations. Individuals with dementia have a variety of symptoms. The Department has a definition for both terms to help distinguish between the two diagnoses so that not all residents have stringent requirements such as those in proposed Section 87724(f).

The question was asked, "If someone can bathe, dress, groom, toilet and feed himself, but cannot manage medication, is that an ADL that makes that individual demented"? Every situation differs on a case-by-case basis and the resident's physician must make a diagnosis of dementia. The definitions for "dementia" and "mild cognitive impairment" recognize the differences in level of functioning, which are needed to allow for different approaches to care and supervision.

Section 87101(d)(7) (Post-Hearing Modification - Section 87101(d)(7) is being renumbered to Section 87101(d)(8).)

4. Comment:

"87101(d)(7) Definition of 'Direct Care Staff' The proposed definition is too broad and includes those who are not caregivers or direct care staff. The definition includes the licensee as 'direct care staff' and thereby subjects the licensee to the same training requirements and fire/earthquake drills as actual caregivers. 'Licensee' is currently defined as 'the individual, firm, partnership, corporation, association or county having the authority and responsibility for the operation of a licensed facility.' (87101(l)(2)) Why is the department including a firm, partnership, corporation, association, or county in the definition of 'direct care staff'? Who at the firm, partnership, corporation, association, or county would need to undergo the additional training and participate in fire/earthquake drills?

"CALA recommends that the RCFE definition of 'direct care staff' be consistent with the definition in the RCF-CI regulations: 'those individuals employed by the facility and who provide direct care services to the residents, including, but not limited to, assistance with activities of daily living.' (CALA)

Response:

The Department appreciates this testimony and the regulation is being amended. The addition of commas help clarify the Department's intent. The proposed language applies only to individuals employed by the licensee and/or licensees who provide direct care to the residents. The definition does not apply to firms, partnerships, corporations, etc. that do not provide direct care. The intent is not to make every licensee subject to the definition; only those providing direct care, including assistance with activities of daily living. In addition, an individual licensee can employ him/herself.

The testifier suggests using the definition of "direct care staff" in regulations for Residential Care Facilities for the Chronically Ill (RCFCI). The Department needs to clarify that the licensee can employ him/herself and that is why the definition specifies

that "direct care staff" means the licensee and/or those individuals employed by the licensee, and these individuals must provide direct care to residents to be considered direct care staff. In addition, the RCFCI regulations specify individuals employed by the facility, but the licensee, not the facility, employs the individual. The RCFCI regulations are similar in that they also say direct care includes, but is not limited to, assistance with activities of daily living.

Section 87101(m)(1) and 87724(a) (Post-Hearing Modification - Section 87101(m)(1) is being renumbered to Section 87101(m)(2).)

5. Comment:

"Section 87101(m)(1) and 87724(a)—Definition of 'Mild Cognitive Impairment'

"We urge you to strike subsection (m)(1) and to strike the last sentence in section 87724(a)

"We fear that introduction of the MCI designation may seriously compromise the care of persons who suffer from dementia in residential care settings. We commend your intent to differentiate between the seriously impaired and the mildly impaired, so as to ensure that the individual rights of the mildly impaired are not compromised. However, the exception given by the term Mild Cognitive Impairment would provide a huge loophole whereby unscrupulous providers could seek to avoid more stringent dementia regulations. We do not believe that this was your intent; there, it is essential that the term be eliminated in these regulations.

"It is important to note the currently the designation of Mile [sic] Cognitive Impairment is primarily used in the research arena. It is not commonly made as a primary diagnosis by a family physician because there is not clear criteria for physicians to apply. There is not a final consensus or diagnostic guidelines for Mile [sic] Cognitive Impairment, and it would be premature to include the term in regulations. When the large, multi-site trials are completed in the next two years, this may be a topic we would like to revisit.

"Finally, the proposed wording for Mild Cognitive Impairment is inaccurate. The language states that a person could present with 'one or more' of the five impairments/disturbances. This language would in fact define 'dementia'. Should the final regulations include the MCI designation, the words 'or more' should be struck to make clear a person with MCI is someone presenting with only one of the five categories listed not one or more." (AA)

Response:

The Department appreciates this testimony. Section 87101(m)(1) is being amended as explained in the response to Comment 3. The Department's proposed amendment was edited and approved by the Alzheimer's Association. In addition, Section 87724(a) is being amended for clarification. The Department does not want to infringe on a

resident's rights and wants to maintain a resident's dignity. A physician must determine if a resident has dementia in order for the licensee to enforce more stringent safeguards specified in Section 87724, Care of Persons with Dementia. New amended language emphasizes the need for ongoing reappraisals and continuous observation of those individuals with mild cognitive impairment because their condition could change.

6. Comment:

"Then I support on page 1 in the Definitions 87101, the speaker right before me, we'd like to support that (m)(1)." (CCA)

Response:

The Department appreciates this testimony. Please see the Department's response to Comments 3 and 5.

Section 87111

7. Comment:

"Next on page 3, 87111, the Advertisement of the License Number, it says in parts Health and Safety Code 1569.68 and 1569.681, the licensee shall reveal each license number in all correspondence and advertisements including Internet. Somewhere it's got to put in the public advertisement, not private. If your internal memos, you have to have the license number on that or different things that facilities feel are confidential. I would like to see the word 'public' in there somewhere, like radio, TV, newspapers, telephone books, etc." (CCA)

Response:

The Department appreciates this testimony. The proposed language pertaining to the facility license number has always been in the RCFE regulations, except the language was turned around to accommodate the additional wording to include the Internet. The Department could not add the word "internet" anywhere else because the rest of the examples of advertisement sources are handbooked directly from statute. Handbook sections do not appear in the Barclays version. In addition, Handbook Section 87111(a)(1)(b) already mentions radio, television, newspapers and telephone directory yellow pages.

The Department is amending the proposed language for clarification by adding the word "public" before advertisements and putting "or correspondence" at the end of the sentence where it originally was. Health and Safety Code Section 1569.68 specifies that all RCFEs shall be required to include their current license number in any public advertisement or correspondence, which is specified in Handbook Section 87111(a)(2).

Section 87222(a)

8. Comment:

"This regulation does not include any provision for a review of the plan of operation. Significantly, it leaves it entirely up to the facility to determine if a 'significant change' has occurred that would affect the services to the residents. We suggest adding the following sentence to the end of this section:

"The licensing agency shall review the plan of operation as part of its annual evaluation." (CANHR)

Response:

The Department appreciates this testimony; however, the Department disagrees with adding the testifier's suggested language. The current regulations meet their suggested requirement to have the licensing agency review the plan of operation as part of its annual evaluation. The language in Section 87222(a) has not changed from what is already in current regulations. That section applies to all RCFEs, whether they care for individuals who have dementia or not, and the licensee must submit any significant changes to the plan of operation to the licensing agency for approval. In addition, Section 87228 specifies that no initial license shall be issued until the licensing agency has completed a review that includes an on-site survey of the proposed premises and a determination of the qualifications of the applicant. Section 87345 specifies that the licensing agency may make any number of visits, in addition to the annual visit, to a facility for various purposes as the licensing agency determines necessary to ensure the licensee is in compliance with regulations and applicable standards.

Section 87222(c)

9. Comment:

"The proposed language – which refers to a licensee 'who accepts or retains residents diagnosed by a physician to have dementia' – suggests that a facility could have a blanket policy against accepting anyone with dementia, or automatically could evict every resident who developed dementia while in the facility. But, if a facility had such a no-dementia rule, that rule arguably would violate the eviction standards set forth in section 87589, and definitely would violate the Americans with Disabilities Act and other similar laws that bar discrimination on the basis of medical condition.

"So we suggest that the regulation instead refer to facilities that 'care for' residents with dementia, in order to avoid the suggestion that a facility could maintain a 'no-dementia' policy. This language is consistent with the 'caring for residents with dementia' language proposed by DSS for section 87566(b)(1).

"We have deleted the language relating to physicians because, under the currently proposed language, a facility's obligations would be dependent on whether a physician

happened to use the words 'dementia' or 'nonambulatory' in the resident's chart. Given the sketchy nature of physician chart notes, it would be improper for a facility's obligation to rest solely upon the contents of those notes.

"A licensee who ~~accepts or retains~~ cares for residents ~~diagnosed by a physician to who~~ have dementia, and/or ~~determined by a physician to be~~ are nonambulatory as a result of mental confusion, shall include additional information in the plan of operation as specified in Section 87724(b)." (NSCLC)

Response:

The Department appreciates this testimony. Without a diagnosis, it is hard to differentiate individuals with mild cognitive impairment from those who have dementia. The Department disagrees that the wording "care for residents with dementia" is a better choice. The wording "accept or retain" is not new and is used in the current regulations, so the Department is continuing to use this wording for consistency. Some form of the words acceptance and/or retention is used in Sections 87567, 87569, 87582, 87593, 87700, 87702 – 87711, and Sections 87713, 87716, and 87724. Under the license, a licensee who accepts or retains a resident is agreeing to provide care and supervision to that resident. Proposed language specifies licensee "who accept or retain resident" rather than "care for residents" with dementia because it clarifies that requirements must be met in order to care for individuals in the facility and admit new residents who have been diagnosed with dementia. Also, the licensee does not have to accept/retain residents with dementia if the licensee cannot meet the health and safety requirements and/or accommodate the residents' needs. The licensee may not have safeguards in place for residents with dementia. Section 87582 specifies acceptance and retention limitations, so the use of the words "accepts or retains" is appropriate. Section 87590(d) specifies that a facility need not accept a particular resident for care. However, if a facility chooses to accept a particular resident for care, the facility shall be responsible for meeting the resident's needs as identified in the pre-admission appraisal specified in Section 87583 and providing the other basic services specified in this section, either directly or through outside resources.

The testifier referred to Section 87566(b)(1), which was written in a different context, so the wording is different. That section also referred back to Section 87724(c)(3), that talked about training for direct care staff if the licensee is accepting or retaining residents diagnosed by a physician to have dementia. Section 87566(b)(1) is being deleted because it is redundant of new proposed language in Section 87566(c)(1)(B). The reference to Section 87724(c)(3) isn't necessary because records aren't required for on-the-job training. Originally proposed Section 87566(b) is being renumbered to Section 87566(c) to be consistent with the numbering in ORD #0902-23 (OAL File #03-0702-03E), effective 7/16/03, and to maintain the correct order of events. In addition, this section is being amended and reformatted.

The testifier wants to delete the language relating to a physician's diagnosis because a facility's obligation would depend on whether a physician happened to use the words "dementia" or "nonambulatory" in the resident's chart. A person may appear to have

dementia as a result of taking certain medication or he/she may have a sickness or just be mildly confused. There is no other way for a licensee to determine who has dementia. This is a condition that requires a diagnosis. By law, only a physician can make a diagnosis; not a licensee. Section 87569(b) requires the medical assessment to include a physical examination of the resident indicating the physician's primary diagnosis and secondary diagnosis, if any and results of an examination for a medical condition that would preclude care of the person by the facility.

The Department is removing language pertaining to a determination by a physician that a resident is nonambulatory as a result of mental confusion to be consistent with the removal of this language in Section 87724(a). Section 87724 pertains to the care of persons with dementia. A person who is nonambulatory as a result of mental confusion does not necessarily have dementia.

10. Comment:

"The current regulation relies on a physician's diagnosis, rather than the facility's plan of operation. We suggest the following change:

"A licensee who accepts or retains residents ~~with dementia-diagnosed by a physician to have dementia, and/or determined by a physician to be nonambulatory as a result of mental confusion,~~ shall include additional information in the plan of operation as specified in Section 87724(b)." (CANHR)

Response:

The Department appreciates this testimony. Please see the response in the last two paragraphs to Comment 9. One paragraph pertains to a physician's diagnosis and the other paragraph explains why the Department is removing language that states "and/or determined by a physician to be nonambulatory as a result of mental confusion."

11. Comment:

"On page 4, 877222, ah, what did I have here, on (c), ah, (a), (b), (c), 'A licensee who accepts or retains residents diagnosed by a physician to have dementia, and/or determined by a physician to be nonambulatory as a result of mental confusion' This has become a big issue of whether maybe they're depressed and yet they might not be declared a person with dementia, mild cognitive disorder. Sometimes they're 60 years of age and basically they're, they're really depressed. There should be some more clarification on that area." (CCA)

Response:

The Department appreciates this testimony. The Department wants to make a distinction between dementia and mild cognitive impairment because, as the testifier stated, an individual could have symptoms like depression, but may in fact not have dementia. The Department does not want to require more stringent regulations to

individuals who have not been diagnosed with dementia. Only a medical professional can diagnose dementia. Numerous safeguards are built into the regulations with ongoing assessments, training, etc. Since the public hearing, the definition for "mild cognitive impairment" is being amended. Please see the Department's responses to Comments 3, 5, 9, and 10.

Section 87565(f)

12. Comment:

"As discussed above, it would be illegal for a facility to have a blanket policy against residents with dementia. We suggest the following revision, which is consistent with the "caring for residents with dementia" language that is proposed by DSS for section 87566(b)(1):

"In addition to Sections 87565(c), (d), and (e), licensees who ~~accept or retain~~ care for residents with dementia shall meet the training requirements in Section 87724(c)(3)." (NSCLC)

Response:

The Department appreciates this testimony. Please see the response to Comment 9 that addresses similar concerns. Section 87565(f) is being deleted because it is not a general personnel requirement and is addressed under Section 87724(c)(3) pertaining to the care of persons with dementia.

Section 87566

13. Comment:

"87566(b) Personnel records This section requires licensees to maintain documentation of training in each employee's personnel record. Many providers maintain a training binder that lists who has attended which training sessions. Requiring that it be copied for each employee and placed in their personnel file is duplicative and unnecessary.

"CALA recommends that the regulations require that the licensee document employees' completion of training programs as specified in Section 87724(c)(3), and if applicable, Section 87725.1." (CALA)

Response:

The Department appreciates this testimony, but disagrees with the testifier's comment. The proposed regulations in Section 87566 specify information shall be maintained in the personnel records, but not specifically in the individual files for each staff. The term "personnel records" does not mean that the documentation must be maintained in the individual staff's personnel file. This regulation does not prevent the use of other

systems, including a training binder, to maintain required information as long as it is part of the personnel records and easily accessible and available for review by the licensing program analyst.

Section 87566(b) is being renumbered to Section 87566(c) to be consistent with the numbering in ORD #0902-23 (OAL File #03-0702-03E), effective 7/16/03, and to maintain the correct order of events. In addition, this section is being amended and reformatted and specifies which staff training and orientation must be documented and specifies information about the training that must be included in the personnel records.

Section 87566(h) (Post-Hearing Modification - Renumbered to Section 87566(f)(2).)

14. Comment:

"Then page 6, 87566, 'The licensing agency shall be entitled . . .', under (h) 87566, under (h), 'The licensing agency shall be entitled to inspect, audit, remove if necessary, and copy the personnel records upon demand during normal working hours.' I think there has to be something said that if they do, the LPAs or analyst take the records away from the facilities, at least sign what documents they have to take away from that facility. They could take lots of information out of those facilities you don't want to take to the public or they should be returned the same day or if the facility has a duplicating machine, they should be duplicated and handed to them at that time. But there's no response that says that the Department staff or representative should return these immediately or at least sign out for them. There'll be some signatures." (CCA)

Response:

The Department appreciates this testimony. ORD #0902-23 (OAL File #03-0702-03E), effective 7/16/03, adopted language at Sections 87566(f) and (f)(1). Proposed Section 87566(h) is being renumbered to Section 87566(f)(2) as it appropriately follows as a subdivision of the new Section 87566(f). In addition, the Department is in the process of developing more detailed regulations on records removal and reproduction, and existing regulations will be updated to reflect the new language. That package will incorporate the testifier's comments. A separate regulation package will go out for public comment on that subject matter.

Section 87569

15. Comment:

"87569 - speaks to 'assessment' of non-ambulatory status. This proposed regulations needs to be clarified that only physicians and registered nurses can perform assessments." (Ronjon)

Response:

The Department appreciates this testimony. The testifier's comment addresses Section 87569(b)(5). Section 87569, pertaining to medical assessments, already clarifies who can perform assessments. Section 87569(a) specifies that prior to a person's acceptance as a resident, the licensee shall obtain and keep on file, documentation of a medical assessment, signed by a physician. Section 87569(b)(1) specifies that the medical assessment shall include, but not be limited to a physical examination of the resident indicating the physician's primary diagnosis and secondary diagnosis. Section 87569(b)(5) specifies the medical assessment shall include a determination of whether the person is ambulatory or nonambulatory or bedridden.

16. Comment:

"Page 7, 87569, 'The medical assessment shall include, but not be limited to:' Somehow, I guess we've asked this before, if the Department has a form that meets that assessment requirements, they should put that form number into the regulations as a parenthesis." (CCA)

Response:

The Department appreciates this testimony. The licensee is required to capture the information specified in the regulations by using any structured document he/she chooses. There is a form that may be used for this purpose, LIC 602A, Physician's Report For Residential Care Facilities For The Elderly (RCFE). However, since LIC 602A is not a required form, the regulation refers only to the information required, not the format in which it is presented.

Section 87570

17. Comment:

"Same way in page 8, 87570, you have (b)(15), you have all of these pre-appraisals, functional capabilities, medical conditions, social factors, reappraisals. These forms should be outlined, if the Department has a form for that, existing or it should be noted that form could be used. Make it user friendly. Consider having it all together." (CCA)

Response:

The Department appreciates this testimony. Please see the Department's response to Comment 2 about a more user friendly document for the dementia regulations. Also, please see the Department's response to Comment 16 pertaining to licensing form numbers in regulations.

Sections 87582(b) and (c)

18. Comment:

"Section 87582(b) and (c)—In subsection (b) the words 'received into or retained' are used and in subsection (c) the words 'admitted or retained' are used. Why is it 'received' in the one and 'admitted' in the other?" (AA)

Response:

The Department appreciates this testimony. The Department agrees with the comment and is amending language in both Sections 87582(b) and (c) to be consistent with the wording used throughout the regulations pertaining to acceptance or retention. In addition, Section 87582 is titled, "Acceptance and Retention Limitations." Please see the response to Comment 9. The Department is using a form of the word "accept" throughout the regulations, rather than the words "received into" or "admitted."

Section 87582(c)(3)

19. Comment:

"87582(c)(3) Admittance/Retention (grammar change) CALA Recommends the following: 'The resident is not elderly and ~~either~~ has needs that are in conflict with either the other residents or the program of services offered.'" (CALA)

Response:

The Department appreciates this testimony. The Department is deleting Section 87582(c)(3) as a result of testimony received, and this deletion is explained in the response to Comment 22.

20. Comment:

"For grammatical reasons, we recommend the deletion of the word 'either.'" (NSCLC)

Response:

The Department appreciates this testimony. The Department is deleting Section 87582(c)(3) as a result of testimony received, and this deletion is explained in the response to Comment 22.

21. Comment:

"And then on page 87582, page 9, it's (b)(2), then (b)(2)(3), 'The resident is not elderly and either has needs that are in conflict with the other residents or the program of services offered' I don't know if they're clarified in definitions, I forgot to look that up, it doesn't say the age of the person because we do have a lot of facilities who

have 60 years of age and over. Fire marshal requires 65 and over when you have to go to a sprinkler system. There should be some age designated and I think it might be in the definition of 60 and over or compatible. Because there are a lot of people in our facilities who are 55 and have depression or sometimes Alzheimers, at 40 or 50 years of age. Maybe as long as they mix with the rest of the residents we support that. If not then they should not be in that facility." (CCA)

Response:

The Department appreciates this testimony. The Department is confused about the question, but thinks it is in reference to Section 87582(c)(3). The Department is deleting Section 87582(c)(3) as a result of testimony received, and this deletion is explained in the response to Comment 22.

The Department believes the testifier needs clarification on the age of elderly residents in an RCFE. There is a definition in Section 87101(r)(5) for "residential care facility for the elderly" that mentions the age requirement and talks about compatibility of the residents. There is also a definition under Section 87101(e)(2) for elderly person. Also, Section 87582(b)(6) states that persons who are under 60 years of age may be received into or retained by an RCFE if their needs are compatible with other residents in care, and if they require the same amount of care and supervision as do the other residents in the facility.

Sections 87582(c)(3), (4), and (5)

22. Comment:

"These regulations are in conflict with the criteria for eviction as stated in Section 87589 and offer very arbitrary and subjective criteria that can allow a facility to evict a resident inconsistent with current law. We recommend the following changes:

"Section 87582 (c)(3) – delete

"Section 87582(c)(4): The resident's primary need for care and supervision results from ongoing behavior that would ~~upset the general resident group~~ endanger the health and safety of other residents.

"Section 87582(c)(5) – delete" (CANHR)

Response:

The Department appreciates this testimony. Section 87589 pertains to eviction procedures, which specify reasons whereby a licensee can give notice to relocate a resident. Reasons for eviction include, but are not limited to, not following rules, nonpayment, or the resident has a need not identified at admission that the facility is not able to meet. Section 87582 pertains to reasons whereby a licensee shall not accept or retain a resident, which are health-related. The licensee is responsible for ensuring

the care and supervision of all residents in the facility. RCFEs are not nursing facilities and medical professionals are not required to be at the facility.

The Department is deleting originally proposed Section 87582(c)(3). This section is unnecessary as it is repetitive of Section 87582(b)(6). In addition, Section 87589(a)(4) specifies that a licensee may evict a resident, if, after admission, it is determined that the resident has a need not previously identified and a reappraisal has been conducted and the licensee and the person who performs the appraisal believe that the facility is not appropriate for the resident.

Section 87582(c)(4) is being renumbered to Section 87582(c)(3) and is being amended for clarification and to meet the intent of the regulations. Without clarifying that the ongoing behavior is caused by a mental disorder, which was mistakenly omitted, then any ongoing behavior could conceivably upset the general resident group and the individual may not be accepted or retained. That was not the intent of the regulation. (See Comment 24.) In addition, an individual with dementia cannot be retained unless the requirements in Section 87724, Care of Persons with Dementia, are met. This is important since the dementia waiver is being removed in Section 87724. The Department disagrees with substituting the words "endanger the health and safety of other residents" for "upset the general resident group." RCFEs are considered the resident's home and residents must be compatible so that they can live together in harmony in the facility and the licensee must be able to meet all of their needs. Using the word "endanger" implies that the licensee must retain a resident unless the person's health is a danger to other residents or the person is a threat to the lives of other residents. The licensee must protect the health and safety of all residents in order to be licensed.

The Department agrees with the suggestion to delete Section 87582(c)(5). This wording was part of existing Section 87582(c)(4) which was originally proposed to be reformatted into Sections 87582(c)(4) and (5) for clarity. RCFEs may provide certain kinds of specialized care, such as dementia or hospice care, but typically do not have special programs that are often found in other licensing categories. Often residents have no need for many facility services. As the regulation carries no specific meaning to RCFEs, the Department is deleting this subsection.

Section 87582(c)(4) (Post-Hearing Modification - Renumbered to Section 87582(c)(3).)

23. Comment:

"Section 87582(c)(4)—We applaud your insertion of the word 'ongoing' This is an important change that we hope will shift the emphasis from rare occurrences/incidents driving evictions to a more comprehensive view of the resident with dementia's overall needs." (AA)

Response:

The Department appreciates this testimony. Changes are being made to this section, but the word "ongoing" is in current regulations. This section is being renumbered to Section 87582(c)(3) for numerical consistency because existing Section 87582(c)(3) is being deleted.

24. Comment:

"The language relating to 'dementia or a mental disorder' has been deleted, which is appropriate, because the regulations should not suggest that dementia or a mental disorder is a disqualifying condition for an RCFE. But the deletion leaves the remainder of the regulation much too vague, specifically in the reference to behavior that would 'upset the general resident group.' The proposed regulation suggests that argumentative residents – or maybe New York Yankee fans – could not be admitted to an RCFE, because they would be likely to 'upset the general resident group'

To remedy this problem, we recommend that 'upset' be replaced with 'endanger the health or safety,' as set forth below:

The resident's primary need for care and supervision results from ongoing behavior that ~~would upset the general resident group~~ endangers the health or safety of other residents. (NSCLC)

Response:

The Department appreciates this testimony. Please see the Department's response in the third paragraph to Comment 22, pertaining to substituting the phrase "endangers the health or safety of other residents." In addition, the Department is adding back in language relating to an ongoing behavior caused by a mental disorder that would upset the general resident group. An RCFE is considered a resident's home and it would be an inappropriate placement if an individual with a mental disorder has an ongoing behavior that would upset the general resident group. Also, an individual with dementia cannot be retained unless the requirements in Section 87724, Care of Persons with Dementia, are met. This is important since the dementia waiver is being removed in Section 87724 and to be consistent with language in Sections 87724(k)(9) and (l)(7).

Section 87582(c)(5)

25. Comment:

"The proposed regulation is too vague. What does it mean to say that a resident 'cannot benefit from the program of services available in the facility'? Does this mean that the resident needs a higher level of care? Or does it mean that the resident does not need even the services provided at an RCFE level of care?

"We recommend that section 87582(c)(5) be deleted. Subsection (c)(2) already prohibits the admission or retention of residents who need nursing facility care, and there is no need to have a regulation that requires that a resident 'benefit' from the available services. It is relatively common and certainly unobjectionable for a resident to have no need for many facility services.

~~"The resident cannot generally benefit from the program of services available in the facility."~~ (NSCLC)

Response:

The Department appreciates this testimony and agrees that Section 87582(c)(5) should be deleted. Please see the Department's response in the fourth paragraph to Comment 22.

Section 87591

26. Comment:

"And then page 10, 87579, Observation of the Resident, ' . . . documented and brought to the attention of the resident's physician and responsible party' Under the law now, basically under Assemblyman Lew, she says it has to be brought to the attention of the family, doctor and the responsible within 24 hours. It's a new law, but it should be put into this." (CCA)

Response:

The Department appreciates this testimony. The Department believes the testifier is commenting on Section 87591. The testifier suggests that when changes in a resident are observed, it should be brought to the attention of the family, doctor and the responsible person within 24 hours. The testifier is referring to AB 1989 (Liu) (Chapter 272, Statutes of 2002) that requires the licensee of an RCFE to make reasonable efforts to contact the resident's contact person or the resident's responsible person within 24 hours after a significant change in the resident's health or mental status. A similar provision is already required in existing RCFE regulations. Section 87587(b) of the RCFE regulations on reappraisals currently requires licensees to "immediately" bring to the attention of the resident's physician and his/her family or responsible person, significant changes. The wording "immediately" means right now and occurring without delay, which is sooner than 24 hours.

Section 87593(d)(6)

27. Comment:

"Section 87593(d)(6)—emergency APS placements

"We ask that you delete the following phrase or explain why it has been added for emergency APS placements: 'or who cannot generally benefit from the program of services available in the facility (Section 87582(c)(5)).'

"In that this section is talking about emergency APS placements, not permanent placements, applying this criterion would seem unnecessary and may simply act to provide a barrier in an emergency situation." (AA)

Response:

The Department appreciates this testimony and agrees that the wording "or who cannot generally benefit from the program of services available in the facility [Section 87582(c)(5)]" should be deleted. This originally proposed language was being added for consistency to mirror the originally proposed regulation changes to Sections 87582(c)(4) and (5). These sections used to be combined and pertained to dementia or a mental disorder. Existing Section 87593(e)(1) has language about the dementia waiver, but this was proposed to be removed in the originally proposed dementia regulations. Language was also originally proposed for addition in Section 87593 to be consistent with the changes originally proposed in Sections 87582(c)(4) and (5). Section 87582(c)(4) is being renumbered to Section 87582(c)(3). The cross-reference in Section 87593(d)(6) is being renumbered to Section 87582(c)(3)(A) which refers to ongoing behavior caused by a mental disorder that would upset the general resident group. A cross-reference to the new proposed Section 87582(c)(3)(B) is unnecessary because similar language is in Section 87593(e). Since Section 87582(c)(5) is being removed due to testimony (see Comment 22), it will also be removed in Section 87593(d)(6).

28. Comment:

"Consistent with our comments to section 87582(c)(4) and (c)(5), we recommend the following revisions:

"Individuals whose primary need for care and supervision results from ongoing behavior that endangers the health or safety of other residents ~~would upset the general resident group or who cannot generally benefit from the program of services available in the facility.~~" (NSCLC)

Response:

The Department appreciates this testimony. The Department agrees to the deletion of the wording "or who cannot generally benefit from the program of services available in the facility" and is deleting this language. See the response to Comment 27. The Department disagrees with the suggestion for substituting the language "endangers the health or safety of other residents" for the proposed language "would upset the general resident group." The Department does agree that proposed language was vague and new language is being proposed. Please see the response in the third paragraph to Comment 22. After the public hearing, proposed Section 87582(c)(4) is being

renumbered to Section 87582(c)(3) and subsections are being added. Section 87593(d)(6) must have language similar to that in Section 87582(c)(3)(A) due to the cross-reference. Section 87582(c)(3)(B) is not cross-referenced because Section 87593(e) already has similar language.

29. Comment:

"See previous comments regarding vague criteria and eviction criteria. We recommend deletion of the phrase "that would upset the general resident group" and to replace this with the phrase: 'that would endanger the health and safety of other residents.'" (CANHR)

Response:

The Department appreciates this testimony. The Department disagrees with the suggestion for substituting the language "that would endanger the health and safety of other residents" for the proposed language "that would upset the general resident group." Please see the response in the third paragraph to Comment 22 and the responses to Comments 27 and 28. In addition, Section 87593(d)(6) must have language consistent with that in renumbered Section 87582(c)(3)(A) due to the cross-reference.

Section 87724(a)

30. Comment:

"As discussed above, it would be illegal for a facility to have a blanket policy against residents with dementia, and a facility's obligation should not be dependent on whether a physician happens to use the words 'dementia' or 'nonambulatory' in the resident's chart. We suggest the following revision, which is consistent with the 'caring for residents with dementia' language that is proposed by DSS for section 87566(b)(1):

"This section applies to licensees who ~~accept or retain care for~~ residents ~~diagnosed by a physician to who~~ have dementia and/or ~~determined by a physician to be~~ are nonambulatory as a result of mental confusion. This section does not apply to licensees who accept or retain residents with a diagnosis of mild cognitive impairment as defined in Section 87101(m)(1)." (NSCLC)

Response:

The Department appreciates this testimony and is removing proposed language that Section 87724 applies if a physician has determined a resident is nonambulatory as a result of mental confusion. Please see the first paragraph of the Department's response to Comment 9 pertaining to the wording "to care for residents who have dementia" and the second to last paragraph in Comment 9 addressing a physician's diagnosis. The last paragraph in response to Comment 9 refers to the reason the language concerning a nonambulatory resident is being removed. Comment 9 discusses the use of the words

"accept or retain." Comment 10 refers to "diagnosis by a physician." The Department is proposing additional language to clarify that the licensee shall continue to observe and reappraise the resident, since a resident's condition can change at any time.

31. Comment:

"See comments in Section 87222(c) above [Comment 10]. Rather than relying on the physician's diagnosis of the resident as the criteria, it should be a facility-based criteria for this section. We suggest the following change:

"This section applies to licensees who accept or retain residents with dementia ~~diagnosed by a physician to have dementia and/or determined by a physician to be nonambulatory as a result of mental confusion~~. This section does not apply to licensees who accept or retain residents with a diagnosis of mild cognitive impairment as defined in Section 87101(m)(1)." (CANHR)

Response:

The Department appreciates this testimony and is removing proposed language that Section 87724 applies if a physician has determined a resident is nonambulatory as a result of mental confusion. Please see the second to the last paragraph in Comment 9 addressing a physician's diagnosis. The last paragraph in response to Comment 9 refers to the reason the language concerning a nonambulatory resident is being removed. The response to Comment 10 also refers to "diagnosis by a physician." Also, see the response to Comment 30.

Section 87724(b)

32. Comment:

"Section 87724(b) and Section 87724(c)(7)—use of psychoactive medications

"In section 87724(b) we recommend adding a subsection (3) to read: 'A facility wide plan of practice to minimize the need for psychoactive medications.'

"Facilities should be striving to minimize the use of psychoactive medications for all residents." (AA)

Response:

The Department appreciates this testimony. The Department disagrees with the suggested language. Not all licensees will care for residents using psychoactive medications so this language would not be appropriate for Section 87724(b) that includes needs of residents with dementia that should be addressed in the plan of operation. In addition, physicians can address residents' needs for psychoactive medications on an individual basis. The Department or licensee has no authority over medications prescribed by a medical professional. RCFEs are not medical facilities

and are designed to provide care and supervision. Larger facilities may employ medical staff, but are not required to do so. The Department proposed additional requirements in the plan of operation for licensees who advertise dementia special care, programming, and/or environments. These include requiring licensees to describe the residents' environment, activities provided, staff training etc. An appropriate environment could help calm a resident, thereby reducing the need for medications. Licensees who advertise dementia special care are required to be trained on the effects of medications on the behavior of residents with dementia; common problems such as aggressive behavior; and positive therapeutic interventions and activities such as exercise, sensory stimulation, activities of daily living, and social, recreational and rehabilitative activities. New language in proposed Section 87724(c)(3)(A) requires direct care staff to be trained in dementia care, including therapeutic activities, behavioral challenges, and the environment. This section also requires direct care staff to be trained to recognize symptoms that can create or aggravate dementia behaviors and to recognize the effects of medications commonly used to treat the symptoms of dementia. In addition, Section 87564.3, Administrator Recertification Requirements, requires administrators who renew their administrator certification on or after January 1, 2003 to complete at least 8 hours of the 40 hour continuing education requirement in subjects related to serving residents with Alzheimer's Disease and other dementias, including, but not limited to, instruction related to direct care and physical environment.

Section 87587 requires the licensee to update the pre-admission appraisal as frequently as necessary to note significant changes and to keep the appraisal accurate. The licensee shall immediately bring any such changes to the attention of the resident's physician and the family or responsible person. If psychoactive medications are affecting a resident's behavior, the licensee would inform the resident's physician and the family or responsible person. Direct care staff don't administer medications, but only assist with medications. The Department is also removing regulatory language in the former proposed Section 87724(c)(7) for the reasons given in this response to Comment 32.

Section 87724(c)

33. Comment:

"As discussed above, it would be illegal for a facility to have a blanket policy against residents with dementia. We suggest the following revision, which is consistent with the "caring for residents with dementia" language that is proposed by DSS for section 87566(b)(1):

"Licensees who ~~accept and retain~~ accept and retain care for residents with dementia shall be responsible for ensuring the following:" (NSCLC)

Response:

The Department appreciates this testimony. The Department disagrees that the wording "accept and retain" should be substituted with "care for." Please see the Department's response to Comment 9 that is similar.

Section 87724(c)(1)

34. Comment:

"87724(c)(1) - includes the word 'cognitively'. This word needs to be replaced with a word or description that the general public can understand such as "process and understand" (Ronjon)

Response:

The Department appreciates this testimony and agrees with the comment. The Department will substitute the word "mentally" since it is used in the definition for a nonambulatory person in Section 87101(n)(2), and the wording in Section 87724(c)(1) was taken from that definition. In addition, the term "physically and mentally capable" is used throughout regulations, as shown in Sections 87703, 87704, 87705, and 87707.

Section 87724(c)(3)

35. Comment:

"Section 87724(c)(3)—training for direct care staff

"We recommend the following language be substituted for subsection A-C and a new subsection D be added:

"(A) Dementia care: including recognizing and responding to signs, symptoms, communication, and behavioral challenges of people with dementia.

"(B) Recognizing symptoms that can create or exacerbate dementia behaviors such as: hydration, skin care, urinary tract infections, feeding and swallowing, and environmental issues.

"(C) Recognizing the effects of medications commonly used to treat the symptoms of dementia.

"(D) Unique needs for assistance with the person's Activities of Daily Living.

"We feel this language is clearer and more inclusive with respect to the scope of the training needed for direct care staff. We would make the following points with respect to the language you proposed:

"We don't understand why subsection (B) singles out hydration and skin care. While these are significant conditions/problems and should be addressed in the training, other conditions/problems should be emphasized as well.

"The issue in medication effects (C) is not simply those commonly used for dementia, such as Aricept, but also those medications prescribed for other symptoms experienced by people with dementia—such as anti-depressants or anti-psychotics. It's important for direct care staff to be aware of the side effects of any of these medications which may be problematic.

"In adding category (D), it's important to note that people with dementia do change in their ability to provide for their own personal care. Staff needs to be trained in when to recognizing when to assist in care, while promoting independence when individuals can provide components of their own care. This also is a key element in recognizing and responding to what may be perceived as difficult behavior." (AA)

Response:

The Department appreciates this testimony and is amending the regulations to be clearer and more inclusive. Section 87565(d) in current regulations describes training requirements for all staff in an RCFE, but not specifically for staff in a facility that has dementia residents. Section 87565(c)(2)(F) already requires recognizing signs and symptoms of dementia in individuals. Section 87565(c)(2)(A) requires training on the aging process and physical limitations and special needs of the elderly and Section 87565(c)(2)(B) requires techniques of personal care services that includes activities of daily living. The Department is adding other conditions that staff should be trained on besides hydration and skin care and is changing proposed regulatory language to require that direct care staff have training in recognizing the effects of medications commonly used to treat the symptoms of dementia. Language from another testifier is also included along with some of the suggestions provided in this comment. The Department is removing duplicative language from Section 87724(c)(3)(B), that is already in Section 87565(c)(2)(F), and is adding the suggested language on activities of daily living under proposed Section 87724(c)(3)(A). The Department is adding training to recognize symptoms that can create or aggravate dementia behaviors.

36. Comment:

"We recommend that the training standards be improved, as set forth below. The addition to subsection (C) is made because generally medications are not *for* dementia (*i.e.*, not for the treatment of the dementia itself), but are appropriate for residents with dementia.

"In accordance with Section 87565(d), direct care staff shall be training in:

- "(A) Dementia care, including but not limited to communication, therapies and activities, common behaviors, hydration and skin care:
- (B) Recognizing signs and symptoms related to dementia; and
- (C) Effects of medications commonly used for residents with dementia." (NSCLC)

Response:

The Department appreciates this testimony and is amending the proposed regulations. Please see the response to Comment 35 that addresses similar concerns.

Section 87724(c)(4)

37. Comment:

"Section 87724(c)(4)—This language is a significant improvement. It gives the attention we sought to the concept and practice of utilizing individual assessments in meeting residents' needs." (AA)

Response:

The Department appreciates this testimony.

Section 87724(c)(5)

38. Comment:

"Section 87724(c)(5)—We commend you for strengthening the language on assessments and recognizing they should be done more often than annually. We would reiterate our desire to see assessments at least every six months given what we know about the progression of dementia in many individuals." (AA)

Response:

The Department appreciates this testimony. Current Section 87587, Reappraisals, specifies that the pre-admission appraisal shall be updated, in writing, as frequently as necessary to note significant changes and to keep the appraisal accurate. It states the licensee shall immediately bring any such changes to the attention of the resident's physician and his family or responsible person. The licensee shall arrange a meeting with the resident, the resident's representative, if any, appropriate facility staff, and a representative of the resident's home health agency, if any, when there is significant change in the resident's condition, or once every 12 months, whichever occurs first, as specified in Section 87583.1.

Section 87724(c)(5)(A)

39. Comment:

"Section 87724(c)(5)(A)—Striking the language allowing relocation of residents to another facility when care needs change is a major step forward in providing appropriate care for people with dementia. Relocation is detrimental to people living with dementia. This change in the regulations also will reduce the ongoing anxiety

families have felt because the progression of this disease may result in their loved one being moved." (AA)

Response:

The Department appreciates this testimony. See the Department's response in the first paragraph of Comment 22.

Section 87724(c)(7)

40. Comment:

"Section 87724(b) and Section 897724(c)(7)—use of psychoactive medications

"In section 87724(c)(7) please substitute the word 'shall' for 'may': A written plan developed with the concurrence of each resident's physician that includes resident-specific procedures and 'shall' include facility-wide practices to minimize the need for psychoactive medications.'

"Facilities should be striving to minimize the use of psychoactive medication for all residents." (AA)

Response:

The Department appreciates this testimony. Please see the response to Comment 32. This section is being removed entirely. Physicians often do not know what effect psychoactive medications will have on a particular resident if the medications have not been used before, and the physician may end up changing medications or the dosage amount. In addition, the pharmacy now provides an informational sheet that gives possible effects of medications prescribed.

Section 87724(d)

41. Comment:

"87724(d) Inaccessibility of certain items

This section specified that modifications shall include '...inaccessibility to residents of ranges, heaters, wood stoves, inserts, and other heating devices.

"CALA recommends that it be clarified that these items are to be made inaccessible to residents with dementia, not all residents in the facility." (CALA)

Response:

The Department appreciates this testimony. This proposed regulation is stating that these items be made inaccessible to residents with dementia. All of Section 87724

pertains to the care of persons with dementia. Proposed Section 87724(a) specifies that Section 87724 applies to licensees who accept or retain residents diagnosed by a physician to have dementia. However, for clarity, the Department is amending the proposed language, as is being done in other sections of the regulations.

Section 87724(f)

42. Comment:

"Section 87724(f)—You've presented a balanced approach to handling this very troublesome issue." (AA)

Response:

The Department appreciates this testimony.

Section 87724(g)

43. Comment:

"Section 87724(f)—You've presented a balanced approach to handling this very troublesome issue." (AA)

Response:

The Department appreciates this testimony.

44. Comment:

"87724(g) [f] Access to personal grooming/hygiene items

"This section clearly states that residents are allowed to keep personal grooming and hygiene items unless there is evidence that they cannot safely manage the items. We appreciate this clarification. But why is this allowance made for personal grooming items (hairspray, nail polish, etc.) and not household products (dusting spray, Woolite, etc.)? If a resident can safely manage hairspray, why not allow them to also have dusting spray in their possession?

"CALA recommends that the same policy apply to household products." (CALA)

Response:

The Department appreciates this testimony. The Department addressed this issue with the Dementia Care Policy Forum. The Department must balance necessary safeguards for residents with dementia while maximizing their independence. The Department wants to maintain the resident's dignity without this resulting in a health and safety issue to the resident him/herself or other residents. Section 87692 currently requires

licensees to ensure the inaccessibility of all substances that could pose a danger to residents. This section specifies that disinfectants, cleaning solutions, poisons, firearms and other items that could pose a danger if readily available to clients shall be stored where they are inaccessible to clients. For example, if a resident has a roommate who has dementia or a resident with dementia can wander into other residents' rooms, then the items specified in Section 87692 could pose a danger and must be stored inaccessible. It is not the intent of the regulation to deny residents, including those diagnosed as mild cognitively impaired, the use of cleaning supplies and similar products. In fact, for clarity, the Department is adding toxic substances such as "cleaning supplies and disinfectants" to Section 87724(f), which are items to be stored inaccessible to residents with dementia. In addition, the licensee is responsible for ensuring ongoing assessment of all residents' supervision requirements. The licensee must ensure that any items available for the use of independently functioning individuals do not put other residents at risk.

The Department wants residents to be able to keep personal grooming and hygiene items in their own possession unless there is evidence to substantiate that the resident cannot safely manage the items. Regulatory safeguards are provided in proposed Sections 87724(g)(1) through (3). See Comments 42 and 43 from the Alzheimer's Association. The Department has provided some leeway on this difficult issue, but needs to maintain as much safety as possible for all residents.

Section 87724(g)(2)

45. Comment:

"87724(g)(2) – again, this regulation speaks to assessment. Unless the licensee is a physician or registered nurse, cannot 'assess' conditions. Suggest ongoing supervision according to residents' needs and requirements" (Ronjon)

Response:

The Department appreciates this testimony. Please see the Department's response to Comment 15 and proposed Sections 87724(c)(5), (c)(5)(A), and (c)(6). Section 87587, Reappraisals, in the current RCFE regulations, specifies that the pre-admission appraisal shall be updated in writing as frequently as necessary to note significant changes in the resident's physical, medical, mental, and social condition. The licensee shall immediately bring any such changes to the attention of the resident's physician and his family or responsible person. The licensee shall arrange a meeting with the resident, the resident's representative, if any, appropriate facility staff, and a representative of the resident's home health agency, if any, when there is significant change in the resident's condition or once every 12 months, whichever occurs first, as specified in Section 87583.1. In addition, see proposed regulation Section 87591, Observation of the Resident.

Section 87724(i)

46. Comment:

"87724(i) Role of conservator in use of egress alert and 87724(l)(4) role of conservator in locked perimeter Why doesn't the department recognize the Durable Power of Attorney for Health Care (DPAHC)? Legally, the attorney-in-fact appointed in a DPAHC has the same power to make medical decisions for the individual as would a conservator.

"CALA recommends that the attorney-in-fact, as designated by a valid DPAHC, be recognized in all areas of the regulations that currently recognize conservators."
(CALA)

Response:

The Department appreciates this testimony. A Durable Power of Attorney for Health Care pertains to medical decisions and does not give authority to make decisions concerning personal rights. Health and Safety Code Section 1569.698(a)(7), concerning secured perimeters, specifies that all admissions to residential care facilities for the elderly shall continue to be voluntary on the part of the resident or with the lawful consent of the resident's legal conservator. Health and Safety Code Section 1569.698(f) specifies that any person who is not a conservatee and is entering a locked or secured perimeter facility pursuant to this section, shall sign a statement of voluntary entry. The facility shall retain the original statement and shall send a copy of the statement to the Department.

The Department is changing the wording of this proposed regulation for clarification. It is not the intent of the Department to include devices that do not violate the resident's personal rights, such as door motion detectors that may give a beeping sound. The proposed regulation is limited to devices worn by the resident. Other devices not worn by the resident do not require written consent or approval.

47. Comment:

"Section 87724(i)—Requirement that a conservator rather than an authorized representative approve use of egress alert devices

"We urge you to restore the existing language that permits an authorized representative to grant approval for the use of wristbands and/or other resident egress alert devices.

"We are unclear why you are proposing that approval by a conservator rather than an authorized representative be required. This section pertains to a facility that has a secure perimeter but is not locked, so approval by an authorized representative is adequate to protect the resident's rights.

"Family members placing a loved one in a facility that is not locked would be faced with a grave and unnecessary hardship to be required to establish and maintain a conservatorship. As you are aware, this process is expensive and can take a year or more. We are very concerned that the requirement of a conservator in order to provide this level of safety for persons with dementia would present a barrier to placement in assisted living facilities." (AA)

Response:

The Department appreciates this testimony. An authorized representative, who is not the resident's conservator, does not have legal authority to waive a resident's personal rights or make personal decisions for the resident. Please see response to Comment 46, second paragraph.

48. Comment:

"And then page 15, under (d), 'The licensee may use wrist bands and other resident egress alert device with the prior approval of the resident authorized, or . . .' and you marked out authorized representative. We'd like to put authorized back in there or recognize somebody else besides the conservator." (CCA)

Response:

The Department appreciates this testimony. Please see the responses to Comments 46 and 47.

Section 87724(l)(4)(B)

49. Comment:

"87724(f)(4)(B) [87724(l)(4)(B)] – a non-conserved adult cannot give informed consent if they cannot understand the risks and benefits, therefore if diagnosed/assessed by the physician and, unable to give consent because of documented non-capacity as assessed by the physician, then, the facility and responsible party will need to go to 3200 of the probate code, or other avenues to receive consent for locked doors. Nonetheless, the capacity needs to be assessed and documented by the physician." (Ronjon)

Response:

The Department appreciates this testimony. Probate Code Section 4657 states, "A patient is presumed to have the capacity to make a health care decision, to give or revoke an advance health care directive, and to designate or disqualify a surrogate." Probate Code Section 4609 states "Capacity means a person's ability to understand the nature and consequences of a decision and to make and communicate a decision." Probate Code Section 4658 provides that a determination that a patient lacks capacity shall be made by the primary physician. Any exception must be specified in a written

advance health care directive. Please see the response to Comment 46. Also, please see the responses to Comments 15 and 45 pertaining to assessment.

Section 87725(a)

50. Comment:

"The currently proposed language suggests that an RCFE could simply refuse to provide care to a person with dementia. As discussed above, such a policy would violate the Americans with Disabilities Act and other relevant law. Accordingly, we recommend the following revision, which is more concise and more accurate than the currently proposed language:

"Licensees who care for residents with dementia must meet the requirements in Section 87724, Care of Persons with Dementia, may provide dementia care. Licensees who advertise, promote, or otherwise hold themselves out as providing special care, programming, and/or environments for residents with dementia or related disorders shall also meet the following requirements:" (NSCLC)

Response:

The Department appreciates this testimony. Please see the Department's response to Comment 9. The Department is amending the proposed language for clarity.

Section 87725(a)(2)(A) (Post-Hearing Modification - Renumbered to Section 87725(a)(1)(A).)

51. Comment:

"Section 87725(a)(2)(A)—definition of 'direct care staff'

"This section should be modified to delete subsection (A) or subsection (A) should be modified to substitute 'includes' for 'excludes'.

"While the assumption appears to be that residents' contact with these staff is minimal, in fact, the contact may be quite extensive. In larger facilities in particular, there are floating relief staff who have ongoing contact with residents as regular staff rotate through their breaks. Relief staff may be providing care for a number of hours to enable all the staff to take their breaks. To suggest facilities don't need to provide training for these staff is inconsistent with the training provisions of the legislation. Furthermore, training is usually provided by departments, so inclusion of staff who cover during staff mealtime and breaks should not impose an undue burden on facilities." (AA)

Response:

The Department appreciates this testimony and agrees with the testifier. A substitute staff may be providing assistance with residents with dementia a large portion of the day and needs to be trained as well. The proposed regulations are being amended to address this testimony.

Section 87725(a)(3) (Post-Hearing Modification - Renumbered to Section 87725(a)(2).)

52. Comment:

"87725(a)(3) Plan of operation for those who advertise or promote special care

"This section identifies components of the plan of operation for licensees who advertise or promote special care. Specifically, it requires a 'description' of various features. The statute, Health and Safety Code Section 1679.627, calls for a 'brief narrative description.'

"CALA recommends that the regulations be consistent with the statutory language to avoid confusion." (CALA)

Response:

The Department appreciates this testimony and is amending renumbered Section 87725(a)(2) to specify a "brief narrative description" to be consistent with statute.

Section 87725(a)(3)(C)2. (Post-Hearing Modification - Renumbered to Section 87725(a)(2)(C)2.)

53. Comment:

"87725(a)(3)(C)(2) Description of services and costs

"This section requires the licensee to provide a 'description of how costs [for services provided to residents with dementia] are determined.' Exactly what the department is proposing is unclear. It is not necessary to itemize licensees' expenses associated with every service available to a resident. What is important, is that the resident/family member understands the pricing (cost based on resident's level of care" services priced ala carte? etc.).

"CALA recommends that this section required the licensee to submit 'a description of the pricing." (CALA)

Response:

The Department appreciates this testimony. The Department is amending this proposed section to more clearly convey the intent. The new proposed language will refer to

services available specific to residents with dementia. Language pertaining to costs will be addressed in another regulation package specific to SB 1898, Chapter 557, Statutes of 2002, regarding pre-admission and other fees.

Section 87725(a)(3)(D) (Post-Hearing Modification - Renumbered to Section 87725(a)(2)(D).)

54. Comment:

"87725(a)(D) (sp) – again, need to clarify who can perform assessments under state law" (Ronjon)

Response:

The Department appreciates this testimony. Health and Safety Code Section 1569.312(e) specifies that every facility required to be licensed shall monitor the activities of the residents while they are under the supervision of the facility to ensure their general health, safety, and well-being. See the responses to similar testimony in Comments 15 and 45.

Section 87725(a)(3)(F) (Post-Hearing Modification - Renumbered to Section 87725(a)(2)(F).)

55. Comment:

"87725(a)(3)(F) Staff

This section required the licensee to 'describe experience and educational qualifications, if any, for direct care staff who provide dementia special care.'

"CALA recommends that it be clarified that this section refers to job description qualifications and not the experience and educational background of current direct care staff." (CALA)

Response:

The Department appreciates this testimony. The Department is amending the proposed regulation because it was not the intent to have the licensee describe the experience and educational qualifications of each direct care staff; especially since there is often a large turnover in staff. New proposed language specifies that the licensee has to describe the experience and education required for prospective direct care staff who will provide dementia special care. For example, the licensee may require more than a high school diploma for staff who provide dementia special care. In addition, the word "qualifications" is being moved to clarify that this section refers to staff qualifications.

The testifier suggested that the Department refer to "job description qualifications." Job description has nothing to do with qualifications. A job description describes the

duties of the job. Qualifications are the basis for allowing someone to do the job. Section 87565(d), Personnel Requirements – General, already specifies that all personnel shall be given on-the-job training or have related experience in the job assigned to them.

Section 87725(a)(3)(G) (Post-Hearing Modification - Renumbered to Section 87725(a)(2)(G).)

56. Comment:

"A facility should be required to include some detail regarding its training. It is not particularly useful (for residents or for facilities) if the required facility statement is nothing more than 'The facility will meet the training requirements of Section 87725.1.' We recommend the following revision:

"Staff training. A statement that description of the training to be provided to direct care staff who provide dementia special care. This training shall meet the training requirements under Section 87725.1, Training Requirements If Advertising Dementia Special Care, Programming, and/or Environments.

"1. In addition, the licensee shall describe any other training requirements for direct care staff." (NSCLC)

Response:

The Department appreciates this testimony. The Department agrees that the licensee should be required to provide more detail about his/her training for direct care staff who provide dementia special care. Initially, the Department did not want the licensee to have to repeat existing language in its plan of operation that is already in proposed regulation Section 87725.1, which describes all of the training requirements. The thought was that this would have made the plan of operation too lengthy and the requirements could be explained upon request at admission. However, the Department is amending the proposed regulation to require the licensee to describe basic training requirements up front. At a minimum this would include information on the time frame for the training, as specified in Section 87725.1(a)(2), and the training topics, as specified in Section 87725.1(a)(2)(A). The Department does not want to place the burden on the licensee to continually have to change the plan of operation every time there is a change in training, which varies by trainer, and every time there needs to be new knowledge to care for current residents. Therefore, only the basic requirements on the required eight hours of in-service training, taken from statute, are in the proposed regulations.

In addition, renumbered Section 87725(a)(2)(G)1. is being deleted since it is somewhat redundant to the requirements in renumbered Section 87725(a)(2)(G). In addition, the licensee would want to explain any training he/she requires that goes beyond statute if he/she is advertising dementia special care because this would help promote the facility. Renumbered Section 87725(a)(3) specifies that the admission agreement shall

inform the resident and the resident's responsible person, if any, or the conservator, that the facility features are described in the facility's plan of operation and that the plan of operation is available for review upon request.

Section 87725(a)(4) [Both Comment 57 and 58 misidentified the section as Section 87725(a)(3)(J)(4).] (Post-Hearing Modification - Renumbered to Section 87725(a)(3).)

57. Comment:

"Section 87725(a)(3)(J)(4)—admission agreement

"We urge you to strike the proposed language in this section and substitute the following: 'The admission agreement, as specified in Section 87568(e) shall inform the resident and the responsible person, if any, or the conservator, as to whether the facility offers a special care Alzheimer's/dementia unit and whether or not the facility is able to accommodate residents' needs throughout the progression of the disease. If there are to be incremental rate increases as additional care is needed, the process by which such rates are calculated shall be disclosed in the agreement. In addition, the type of security employed to discourage wandering should be disclosed. If there are circumstances where a facility could no longer accommodate a resident's needs, the admission agreement shall state the criteria used to determine such circumstances and provide that adequate notice³ and time be given to allow the resident and the responsible person, if any, or the conservator to find appropriate placement elsewhere. The admission agreement shall state that it is the facility's responsibility to assist in finding appropriate alternate placement. The admission agreement shall also inform the resident and the responsible person, if any, of the conservator, that he facility features, as specified in Section 87725(a)(3), are described in the plan of operation and are available for review upon request.'

"This language reflects our view that the agreement should outline at least four features of the special care unit:

- "1. What stage(s) of the disease the facility is equipped to handle
2. The incremental rate increase mechanism as acuity of care changes
3. The type of ingress/egress security used
4. The eviction procedure if the resident needs to be transferred to a higher level of care.

"Because there has been a fair amount of misleading advertising in the area of special care units, we are concerned that if the admission agreement only informs the consumer that he/she can review the special features of the facility found in the plan of operation and the plan does not contain specific reference to the scope of the facility's services, inappropriate placements may be made. We're also concerned that facilities can, and have, required residents to leave with minimal notification and no assistance in placement. Residents should not be required to move with no adequate or safe place to go." (AA)

Response:

The Department appreciates this testimony. Renumbered Section 87725(a)(3) requires that the admission agreement, as specified in Section 87568(e), shall inform the resident and the resident's responsible person, if any, or the conservator, that the facility features are described in the facility's plan of operation and that the plan of operation is available for review upon request if the licensee advertises or promotes dementia special care. This meets requirements specified in Health and Safety Code Section 1569.627 on disclosure. The admission agreement is the single document that all residents receive and are required to date and sign prior to, or upon admission. Section 87568(e) currently specifies this and also states that attachments to the agreement may be utilized as long as they are also signed and dated.

The testifier wants the admission agreement to address the stages of the disease the facility is equipped to handle. Section 87568, Admission Agreements, currently requires that agreements specify the basic services and optional services to be made available. Section 87590(c) specifies that the admission agreement shall specify which of the basic services are desired and/or needed by, and will be provided for, each resident. The testifier wants to include the eviction procedure if the resident needs to be transferred to a higher level of care. Section 87582 specifies the acceptance and retention limitations. There are ongoing assessments and reappraisals. The licensee must relocate a resident if he/she cannot safely meet his/her needs. Section 87701.2 refers to the health condition relocation order. Eviction procedures are currently specified in Section 87589. Renumbered Section 87725(a)(2)(I)4. specifies that the licensee shall provide an explanation of the conditions that would require a resident to be relocated. The testifier wants the admission agreement to show an incremental rate increase mechanism as acuity of care changes. See the response to Comment 53. The testifier wants the admission agreement to include the type of ingress/egress security used. Renumbered Section 87725(a)(2)(C)2. requires licensees who advertise or promote dementia special care to specify the services available specific to residents with dementia and renumbered Section 87725(a)(2)(H)1. requires the licensee to describe the physical environment, including delayed egress and secured perimeters.

58. Comment:

"This section should specify that both the facility's features and the plan of operation are available for review upon request. As written, this is unclear. We suggest the following revision:

"The admission agreement, as specified in Section 87568(e), shall inform the resident and the resident's responsible person, if any, or the conservator, that the facility features, as specified in Section 87725(a)(3), are described in the facility's plan of operation and ~~are~~ that the plan of operation is available for review upon request."
(CANHR)

Response:

The Department appreciates this testimony and agrees that the suggested language provides further clarification. The Department is amending the proposed regulations.

Section 87725(b)

59. Comment:

"87725(b) Discontinuing advertising, promoting special care

"This section proposes specific requirements for licensees who plan to 'discontinue advertising, promoting, or otherwise holding themselves out as providing special care, programming, and/or environments for residents with dementia or related disorders.' It includes notifying current residents of the plan to stop such advertising. It should be recognized that discontinuing advertising special dementia care services does not mean that special care programs for current resident will cease, just that the licensee is no longer promoting the program to potential residents. (CALA)

Response:

The Department appreciates this testimony and the Department clearly understands that discontinuing advertising dementia special care services does not necessarily mean that special care programs for current residents will cease. However, the licensee only has to meet the requirements in Sections 87725, 87725.1, and 87725.2 if he/she is advertising dementia special care, programming, and/or environments. Health and Safety Code Sections 1569.626 and 1569.627 only apply to licensees of RCFEs who advertise or promote dementia special care, programming, or environments. The Department cannot go beyond what is required in statute. Additionally, statute requires a description of special facility features if the licensee is advertising or promoting dementia special care. The Department had to put regulations in place for the licensee to provide proper notification if he/she is no longer advertising dementia special care, programming, and/or environments. Otherwise, without proper notification, the Department, resident, and the resident's responsible person may not realize that the licensee is no longer providing the specialized training as required in proposed Section 87725.1 and no longer describing facility features specific to dementia in the plan of operation, as required in renumbered Section 87725(a)(2).

Section 87725.1(a)(1)(A)1.

60. Comment:

"87725.1(a)(1)(A)(1) Repeating orientation

"This section requires an employee who has a break in service of more than 60 days (i.e., maternity or family leave) to repeat new employee orientation. A two-month

maternity or other type of leave does not mean that the employee has forgotten how to perform his/her job.

"CALA recommends requiring a repeat of the new employee orientation for those employees who have a significant break in service of six months or more.

Response:

The Department appreciates this testimony. The Department is amending this proposed section to specify a break in service of more than 180 consecutive calendar days.

Section 87725.1(a)(1)(C)1.

61. Comment:

"We recommend the deletion of this subsection, which relates to training provided by other direct care staff members. The direct care staff members almost certainly will not have the expertise to do legitimate training.

"In many instances, newly-hired staff members will have no expertise regarding dementia care. The statutorily-mandated six hours should be provided by someone who has solid expertise, not just by a fellow staff member who has completed the six-hour orientation.

"We recognize that the statute (Health & Safety Code § 1569.626(a)) refers to 'preceptorship, mentoring, and other forms of observation and demonstration,' but this statutory language does not mean that a certain level of expertise cannot be required of trainers." (NSCLC)

Response:

The Department appreciates this testimony. Section 87725.1(a)(1)(C)1. specifies that up to two hours of the required six hours of orientation may include mentoring and hands-on training from direct care staff who have met the training requirements specified in Section 87725.1. Part of that training is at least eight hours of in-service training on the subject of serving residents with dementia as specified in Section 87725.1(a)(2). The Department cited Section 87725.1 because it is inclusive of Sections 87725.1(a)(1) and (2), but the Department is amending Section 87725.1(a)(1)(C)1. to clarify that staff providing mentoring must have completed both the six hours of orientation and the eight hours of in-service training on the subject of serving residents with dementia. Also, proposed regulations specify that instruction may only include two hours of mentoring and hands-on training, which leaves an additional four hours of orientation by other means as specified in Section 87725.1(a)(1)(C).

Section 87725.1(a)(2)(A)

62. Comment:

"87725.1(a)(2)(A) Training topics

"This section goes beyond the statutory language to provide a list of required training topics. Since the required training programs must be developed by, or in consultation with 'individuals or organizations with expertise in dementia care...' it is not necessary to adopt such proscriptive regulations regarding the training topics. An expert in dementia care may identify a necessary training topic not identified by the department in the list of six items.

"CALA recommends eliminating the list of training topics and instead suggesting topics as examples while allowing for other appropriate topics as determined by dementia care experts." (CALA)

Response:

The Department appreciates this testimony. The Department researched the training requirements of other states to compile the topic areas, which were the ones most commonly used throughout other states. Training topics are listed elsewhere in RCFE regulations as well. The required topic areas are important to ensure well-rounded knowledge. The Department specified a minimum of two of the listed topics to be covered annually to allow the trainer time to teach additional topics if he/she chooses. In addition, the Department did not specify how long the training on each component has to be. Without listing some required topics, the training provided may not be as pertinent or beneficial to staff who care for residents with dementia.

Section 87725.1(a)(2)(C)

63. Comment:

"Section 87725.1(a)(2)(C)—who provides training

"We recommend that you modify the proposed language to make clear qualified staff can also provide the training. The section would read: The training shall be developed by, or in consultation with 'qualified staff,' individuals, or organizations with expertise in dementia care and with knowledge on the training topic areas specified in Section 87725.1(a)(2)(A).

"While you reference staff in subsection (E)(1), the above language makes it clear in the first reference to who can provide the training." (AA)

Response:

The Department appreciates this testimony. Section 87725.1(a)(2)(C) specifies training is to be developed by, or in consultation with, an individual(s) or organization(s) with expertise in dementia care, as required in Health and Safety Code Section 1569.626(b). A consultant is not necessarily the trainer. Section 87725.1(a)(2)(E) specifically addresses the trainer and his/her education and experience requirements. Consultants, RCFE administrators, or direct care providers for individuals with dementia may be the trainer if they meet the specified education and experience requirements that are addressed in Section 87725.1(a)(2)(E).

Section 87725.1(a)(2)(D)

64. Comment:

"Section 87725.1(a)(2)(D)—trainer documentation

"We suggest substituting the words 'person(s) providing the training' for the word 'consultant'.

"Since the trainer may be staff, the requirement for maintenance of documentation should not just refer to 'consultant(s)'. (AA)

Response:

The Department appreciates this testimony. See the response to Comment 63. Section 87725.1(a)(2)(C) talks specifically about obtaining consultation on the training from a knowledgeable individual or organization, or having training developed by a consultant. Section 87725.1(a)(2)(D) is specific to maintaining documentation for the consultant. Section 87725.1(a)(2)(E) specifies the education and experience requirements for the trainer. Section 87725.1(a)(2)(F) addresses documentation requirements for the trainer. The Department is making a distinction between the trainer and consultant, although an individual may be both if he/she meets the requirements in Sections 87725.1(a)(2)(E)1. and 2.(i). In addition, the Department is adding Section 87725(a)(2)(C)1.(i) that specifies if the consultant and trainer are the same person(s), the documentation requirements specified in Sections 87725.1(a)(2)(D) and (F) shall both be met.

Section 87725.1(a)(2)(E)1.

65. Comment:

"I and my family are RCFE Administrators. The dementia training and dementia orientation program that I and my family organized and developed years ago exceeds the requirements of the proposed regulations, except in one area: Section 87725.1(a)(2)(E)1. This particular regulation would require each of us to complete a

three unit course on the psychology of aging to do what we are already experienced in doing and have been doing for quite some time.

"Using appropriate qualified dementia training materials as detailed in earlier sections of the proposed regulations, and my family respectfully request that the 'trainer' section of the proposed regulations be modified as follows:

"All training shall be conducted by a person who is knowledgeable in a subject that is relevant to the subject area in which training is to be provided, and who satisfies at least one of the following criteria related to education and experience:

- "(A) A four-year college degree, and two (2) years of experience in an area relevant to caring for the needs of elderly residents with dementia, or
- (B) License to work as a health care provider in California, or
- (C) At least two (2) years of experience in California as an administrator in an RCFE caring for dementia residents, within the last eight (8) years, and with a record of administering facilities in substantial compliance, as defined in Section 87101(s)(8), or
- (D) Have completed minimum of three (3) units on psychology of aging.

"The above modification reads almost exactly the same as Section 87565(c)(3), except that a dementia focus has been added to the wording.

"One significant perspective is that education is a preparation (or a substitute for experience) to work in a specific work environment, or perhaps various work environments. On-the-job work experience is often a required part of some credentials enabling the individual to qualify for certain types of work, professional and non-professional.

"Our Consulting Facility Physician has years of experience in providing professional services to residents with a primary diagnosis of dementia. I and my family have years of experience in providing and supervising dementia care. Although some of us have completed a number of college level social science courses, including an Introduction to Psychology, none of us, including our Consulting Physician, has completed a psychology of aging course. The way the proposed 'trainer' regulation is written now would prohibit all of us from providing the necessary in-service training using training materials developed by a nationally recognized Alzheimer's company and other qualified consultants that we are already using. The currently proposed 'trainer' regulation would prohibit us from practicing the education we have attained in actual practice and what we are qualified to practice by reason of our experience.

"Please consider modifying the 'trainer' section of the proposed regulations as suggested above. Thank you for your consideration." (RCSC)

Response:

The Department appreciates this testimony and agrees, upon further research, that limiting an educational course to just three units on psychology of aging is overly

restrictive. Other courses are also good and there is a lack of continuity of course titles from one part of the state to another. The Department does have to be specific, however, so that a licensing program analyst doing a site visit can ensure the qualifications for a trainer are met by looking for something concrete. See responses to Comments 62 and 63.

The Department contacted individuals in various professional capacities to come up with regulations that are not overly stringent, yet will ensure that a trainer has adequate experience and education to teach dementia special care. The Department tried to be consistent with Section 87565(c)(3), but not all of the criteria in that section meets the intent of these regulations and the Department had to make some changes. The Department is proposing new requirements for the trainer that include two years full-time experience or its equivalent, within the last four years, as an RCFE administrator or as a direct care provider for individuals with dementia. The time frame for that experience is being changed to within the last four years, instead of the last eight years, because dementia care is a more specialized field and more recent experience is needed. In response to the testifier's comment, a health care provider may not have experience with elderly individuals who have dementia and a four year college degree seems overly restrictive and may be in an unrelated subject; therefore, these suggestions were not used. There are many other good courses besides psychology of aging, so the Department is giving examples of other courses in the proposed amended regulations. Proposed amended regulations specify successful completion of a required number of education hours or units and specify acceptable educational sources. Regulations also specify the requirements for a consultant to be a trainer.

Section 87725.1(a)(2)(E)1. and (F)(4)

66. Comment:

We request that you strike (E)(1) and modify (F)(4) to read as follows: An official transcript from an accredited educational facility showing 'coursework completed specific to dementia.'

"The minimum requirement of 3 units on psychology of aging is unnecessarily restrictive. In fact, if that is all the dementia-related education the trainer has, this particular course would be inadequate. We would suggest that the earlier references in (C) to 'expertise in dementia' and (D) to the 'educational and professional qualifications specific to dementia' are adequate." (AA)

Response:

The Department appreciates this testimony and is deleting the prior language on psychology of aging. Please see the responses to Comments 62, 63, 64 and 65. The testifier cited references in Sections 87725.1(a)(2)(C) and (D), but these are specifically for the consultant, not the trainer. Section 87725.1(a)(2)(E) pertains to the trainer's requirements, which is being amended to show the addition of education and experience requirements for the trainer. Additional language is being added on

documentation that must be maintained on the trainer and on the required proof of completion of the education requirements. New proposed language is being provided on the education and experience requirements for a trainer. The Department needs to specify the number of hours of course work and acceptable classes.

g) 15-Day Renotice Statement

Pursuant to Government Code Section 11346.8, a 15-day renotice and complete text of modifications made to the regulations were made available to the public following the public hearing. Written testimony on the modifications renoticed for public comment from October 17, 2003 to October 31, 2003 was received from the following:

Jackie Wynne McGrath, Alzheimer's Association (AA)

Monica E. Williamson, California Association of Homes and Services for the Aging (CAHSA)

Heather S. Harrison, California Assisted Living Association (CALA)

Charles W. Skoien, Community Residential Care Association of California (CRCAC)

Michael S. Goryan (GORYAN)

The comments received and the Department's responses to those comments follow. At the end of each comment is the name of the commenter in parentheses. General comments follow the specifically identified section comments.

Section 87101(d)(4)

1. Comment:

"The word judgment is misspelled, and alcoholic dementia is not reversible. Alcoholic dementia is but one of the more violent and hallucinogenic forms of dementia. It is not reversible. Please strike the word alcohol from this definition.

"(4) Dementia. 'Dementia' means the loss of intellectual function (such as thinking, remembering, reasoning, exercising ~~judgement~~ judgment and making decisions) and other cognitive functions, sufficient to interfere with an individual's ability to perform activities of daily living or to carry out social or occupational activities. Dementia is not a disease itself, but rather a group of symptoms that may accompany certain conditions or diseases, including Alzheimer's Disease. Symptoms may include changes in personality, mood, and/or behavior. Dementia is irreversible when caused by disease or injury, but may be reversible when caused by depression, drugs, ~~alcohol~~, or hormone/vitamin imbalances. (Continued)" (GORYAN)

Response:

The Department appreciates this comment, but it is outside of the scope of the 15-day renotice changes. However, the Department verified that dementia caused by alcohol may be reversible.

Section 87101(m)(2)

2. Comment:

“This definition is too ahead of its time. The medical community, according to a 1998 UCLA study reported by Dr. Jeffrey Cummings, found that 60 percent of the U.S. medical community does not understand dementia. It can hardly be anticipated that the medical community will suddenly understand MCI as presented in Title 22 regulations. The medical community has not embraced MCI as a diagnosis.

“This definition, and subsequent 87724(a), which allows MCI in an RCFE without a dementia waiver, will set up a battle between physicians, administrators/licensees and evaluators (LPAs). Too many LPAs are diagnosing dementia, which LPAs are prohibited from doing without the benefit of having a medical degree. Too many LPAs are technically ‘practicing medicine without a license.’ If an LPA suspects dementia what is his or her criteria to determine MCI versus dementia? Can an LPA dispute a physician’s diagnosis? Who is correct and whom will Community Care Licensing support? If the physicians are thought to be incorrect, then the LPA will have, indeed, diagnosed a resident.

“The Evaluator’s Manual states on page 11, 87110(b) that ‘...the licensing agency *should not rely on the determination in the medical assessment because physicians frequently do not understand the definition of nonambulatory that is used in community care facilities.*’ (By the way, an RCFE is not a community care facility according to Health and Safety Code 1502.5.) If the LPAs are not to rely on physician findings for nonambulatory, is the same true for MCI? In my teaching of hundreds of administrators and licensees, there are too many conflicts now regarding dementia status, and the MCI diagnosis will create many, many more.

“It is my personal recommendation that the Mild Cognitive Impairment definition be removed. It is not appropriate. The definition surfaced at the 2000 World Congress on Alzheimer’s Disease, but is generally not accepted in the medical community.

“If removal is not acceptable, please strike the following language:

“(2) Mild Cognitive Impairment. “Mild cognitive impairment” (MCI) refers to people who are experiencing cognitive abilities are in a “conditional state” between normal aging and dementia. Normal age-related memory changes that may include forgetting a person’s name or the location of an object. ~~however, individuals with MCI have difficulty with short-term memory loss. MCI is a state in which at least one cognitive function, usually short-term memory, is impaired to an extent that is greater than would be anticipated in the normal aging process.~~ MCI is characterized by short-term memory problems, but no other symptoms characteristic of dementia (e.g., problems with language, ~~judgement, judgment,~~ changes in personality or behavior) that affect a person’s daily functioning are present. Individuals with MCI may experience some difficulty with intellectually

demanding activities, but lack the degree of cognitive and functional impairment required to meet diagnostic criteria for dementia. (Continued)

“If this definition or any portion thereof is allowed to remain in the regulations, there must be an immediate change in LIC602A, the physician’s report, to explain to a physician what MCI is. Can a physician legally diagnose MCI if an ICD-9 or CPT code does not exist?” (GORYAN)

Response:

The Department appreciates this testimony; however, the Department disagrees with the testifier’s suggestion to remove the definition for “mild cognitive impairment” or to amend the language if removal is not acceptable. As explained in the Final Statement of Reasons, Part f, Testimony and Response, the definition is a consensus of many experts including the Alzheimer’s Society, the Alzheimer’s Disease Center, and Dr. Steven Ferris of the Silberstein Aging and Dementia Research Center. The Department has a definition for both “dementia” and “mild cognitive impairment” to help distinguish between the two diagnoses and to make the licensee aware that residents may have “mild cognitive impairment” if their cognitive abilities are in a “conditional state” between normal aging and dementia. A physician must determine if a resident has dementia in order for the licensee to enforce more stringent safeguards specified in Section, 87724, Care of Persons with Dementia. Without this diagnosis, the Department wants to maintain a resident’s dignity and does not want to infringe on a resident’s rights. Proposed language emphasizes the need for ongoing reappraisals and continuous observation of those individuals with mild cognitive impairment because their condition could change suddenly. Nothing in proposed regulations require a physician to diagnose “mild cognitive impairment.”

The testifier cited a 1998 report that found that 60 percent of the U.S. medical community does not understand dementia. That report is five years old and there have been significant discoveries, including medications for dementia, since that time. On the internet, under one search engine, there were over 62,000 articles on “mild cognitive impairment” alone.

The testifier commented that if the definition for “mild cognitive impairment” or any portion thereof is allowed to remain in the regulations, there must be an immediate change in LIC 602A, the physician’s report, to explain to a physician what mild cognitive impairment is. The LIC 602A, Physician’s Report For Residential Care Facilities For The Elderly, is not a required form. The LIC 602A asks about the ambulatory status and has a space to comment on confused/disoriented, unable to follow instructions, unable to communicate own needs, unable to leave facility unassisted and information on capacity for self-care. The physician may or may not write in a diagnosis for dementia or mild cognitive impairment. This is not requested on the form. Currently the LIC 602A does not explain what dementia is and therefore, it is not necessary to explain what mild cognitive impairment is.

The testifier said that too many Licensing Program Analysts (LPAs) are diagnosing dementia. LPAs are not allowed to diagnose. If they observe anything that may jeopardize the health and safety of the resident, they may request the licensee to update the resident's medical assessment. The licensee is required to bring any changes of a resident to the attention of the resident's physician and his family or responsible person. There is no requirement that the physician must ever diagnose a resident as having dementia or mild cognitive impairment. If a physician happens to diagnose a resident as having dementia, then Section 87724 applies to that resident. If a resident happens to be diagnosed with mild cognitive impairment, that individual is not treated any differently than any other resident without a diagnosis of dementia. The proposed regulations no longer require a dementia waiver. Proposed Section 87724 only applies if there is a physician's diagnosis that a resident has dementia.

The testifier cited a quote in the Evaluator Manual that said "...the licensing agency should not rely on the determination in the medical assessment because physicians frequently do not understand the definition of nonambulatory that is used in community care facilities." The Evaluator Manual is explaining that physicians may not realize that the term nonambulatory goes beyond the need for mechanical aids such as crutches, walkers, and wheelchairs. It also means persons who are unable to leave a building unassisted in an emergency condition because they are unable, or are likely to be unable, to mentally respond to a sensory signal approved by the State Fire Marshal or an oral instruction relating to fire danger. "Community Care Facility" is defined to mean any facility, place or building where nonmedical care and supervision is provided, as defined in Section 87101(c). The Evaluator Manual will be updated to correspond with dementia regulations when approved.

Section 87566(a)

3. Comment:

"Personnel records shall be maintained the licensee, administrator and contain the following information:

"Comment: insert on between 'the' and 'licensee'." (CAHSA)

Response:

The Department appreciates this testimony and realizes that the revisions made subsequent to public hearing are difficult to read. A description of the methods used to illustrate the changes to original text was provided. Added language was shown with a double underline and shaded text and a copy of revisions was also available that just showed proposed text. The word "on" is already included between the words "maintained" and "the licensee" and is shown with a double underline and is shaded.

Section 87566(b)

4. Comment:

"Personnel records shall be maintained for all volunteers and shall contain the following: (Continued)

"Comment: given the transient nature of the vast majority of volunteers it is not feasible to maintain personnel records for ALL volunteers. This impracticable provision may have the unintended consequence of discouraging volunteerism."
(CAHSA)

Response:

The Department appreciates this testimony, but the only change the Department made to this section in the dementia regulation package was the numbering. A new Section 87566(b) was added by ORD #0902-23 (OAL File #03-0702-03E), effective July 16, 2003. The proposed Section 87566(b) in this filing is renumbered to Section 87566(c) to accommodate the addition of the new Section 87566(b).

Section 87566(f)(1)

5. Comment:

"The licensee shall be permitted to retain such records in a central administrative location provided that they are readily available to the licensing agency at the facility upon request.

"Comment: if the (personnel) records are maintained at a central administrative location that is off-site or located in another building on the campus, the administrator should be given a reasonable amount of time to comply with any request for records. The term 'readily' may be subject to many different interpretations, whereas production of the records within a reasonable amount of time is a more generally understood. This section should be re-worded to reflect a reasonable amount of time to produce the records:

"The licensee shall be permitted to retain such records in a central administrative location provided that they are available to the licensing agency at the facility within a reasonable time after request." (CAHSA)

Response:

The comment is outside the scope of the 15-day renote changes.

Section 87569(b)(5)

6. Comment:

“Please make the following addition if the MCI definition or any portion thereof is allowed to remain in the regulations:

“(b) The medical assessment shall include, but not be limited to: (Continued)

“(5) The determination whether the person is ambulatory or nonambulatory as defined in Section 87101(a) or (n), or bedridden as defined in Section 87582(d), or has a diagnosis of mild cognitive impairment as defined in 87101(m)(2). The assessment shall indicate whether nonambulatory status is based upon the resident’s physical condition, mental condition or both. (Continued)” (GORYAN)

Response:

The Department appreciates this testimony; however, the Department disagrees with adding the testifier’s suggested language. The Department added nonambulatory to this proposed regulation for clarity and appropriate cross-references were added. Currently the LIC 602A requests information to determine if a resident is ambulatory, nonambulatory, or bedridden to help determine whether persons are able to leave a building unassisted under emergency conditions and to determine whether State Fire Marshal requirements are being met to protect the health and safety of the residents. It is not necessary to include a diagnosis of mild cognitive impairment because these individuals are treated no differently than any other residents. There are stricter regulatory requirements if a physician has diagnosed a resident with dementia. The Department cannot regulate/order a physician to make a diagnosis of any kind, including dementia, mild cognitive impairment, or anything else. If a physician does diagnose an individual with dementia, the requirements in Section 87724 must be met.

Section 87582(c)(4)

7. Comment:

“The bedridden laws, as outlined in Health and Safety Code 1569.72(b), (c), and (j) allows bedridden residents to be admitted to and remain in community-based residential care settings. Item (c)(4) is obsolete, and since it is undergoing revision, why not revise it to reflect current law? The Evaluator’s Manual has an outline of provisions, starting on page 97, that can easily be adopted for review. Strike the following and create a new section:

“(c) No resident shall be accepted or retained if any of the following apply: (Continued)

~~“(4) The resident is bedridden, other than for a temporary illness or for recovery from surgery, except as otherwise provided in Section 87582(f).”~~
(GORYAN)

Response:

The Department appreciates this testimony; however, the Department disagrees with adding the testifier’s suggested language. New language is being proposed for this section to relocate the language that was in Section 87582(c) to this section, which is the only section to which that language applies. Since changes were already made throughout proposed Section 87582(c), current language in that section needed to be corrected. This package does not include new statutes not related to dementia. The Department is working with the State Fire Marshal on a separate regulation package concerning bedridden issues.

Section 87724(c)(1)

8. Comment:

"The facility has a non-ambulatory fire clearance for each room that will be used to accommodate a resident with dementia who is unable to or unlikely to respond either physically or mentally to oral instructions relating to fire or other dangers and to independently take appropriate actions during emergencies or drills.

"Comment: what is a 'non-ambulatory fire clearance' and should examples of such devices be enumerated:" (CAHSA)

Response:

The Department appreciates this testimony. The definition for “nonambulatory person” is in Section 87101(n), which explains how it relates to fire clearance, and the definition provides examples of a nonambulatory person. Section 87220 specifies that all facilities shall maintain a fire clearance approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal. A nonambulatory fire clearance is a fire clearance for nonambulatory persons. Examples of nonambulatory clearance devices do not have to be enumerated. Prior to accepting a nonambulatory person, the applicant or licensee shall notify the licensing agency and obtain an appropriate fire clearance, approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal, through the licensing agency.

Section 87724(c)(3)

9. Comment:

“Section 87565(d) is really applicable to facilities of 15 beds or less. I would strike (d) out and insert (c).

“(c) Licensees who accept and retain residents with dementia shall be responsible for ensuring the following:

“(3) In addition to the on-the-job training requirements in Section 87565(d) (c), staff that provides direct care to residents with dementia shall receive the following training as appropriate for the job assigned and as evidenced by safe and effective job performance.” (GORYAN)

Response:

The Department appreciates this testimony; however, the Department disagrees with adding the testifier’s suggested language. Section 87565(c) pertains to requirements for RCFE staff that assist residents with personal activities of daily living and that site specifies additional required training and mandatory hours of training. This is not on-the-job training. Section 87565(d) pertains to on-the-job training, as does section 87724(c)(3). Section 87565(d) specifies all personnel shall be given on the job training or have related experience in the job assigned to them. This training and/or related experience shall provide knowledge of and skill in the specified topics provided in that section to enable staff to do the job assigned as evidenced by safe and effective job performance. Section 87724(c)(3) refers to additional on-the-job training, beyond Section 87565(d), for staff who provide direct care to residents with dementia. Section 87565(c) was added in another regulation package that changed the numbering, which became effective in August 2002. That package was a result of SB 1670 (Mello), Chapter 1169, Statutes of 1992. (See Health and Safety Code Section 1569.625.)

Section 87724(c)(4)(A)

10. Comment:

“This section has led to many of the problems found in small facilities. The live-in caregiver is seldom awake at night even when a resident requires that level of supervision. This has led to many injuries, wanderings from the facility, and accidents. To avoid more abuses by the smaller facilities, please strike the following language from the regulation:

“(A) All facilities caring for persons with dementia, in addition to requirements specified in Section 87581, Night Supervision, a facility with fewer than 16 residents shall have at least one night staff person awake and on duty. if any resident with dementia is determined through a pre-admission appraisal, reappraisal or observation to require awake night supervision.” (GORYAN)

Response:

The Department appreciates this comment, but it is outside of the scope of the 15-day renote changes.

Section 87724(e)

11. Comment:

“Health and Safety Code 1569.84 - .87 exempt six-bed or fewer facilities from coming under local building codes. Section (e) cannot violate the Health and Safety Code. If this language is used, it will violate the law. Please amend the regulation to read as follows in order to comply with the California State Health and Safety Code:

“(e) Swimming pools and other bodies of water shall be fenced and in compliance with state and local building codes. Facilities licensed for six beds or less should erect a fence of at least five feet in height.” (GORYAN)

Response:

The Department appreciates this comment, but it is outside of the scope of the 15-day renote changes.

Sections 87724(f) and (g)

12. Comment:

"This section clearly states that residents are allowed to keep personal grooming and hygiene items **unless there is evidence that they cannot safely manage the items**. We appreciate this clarification. But why is this allowance made for personal grooming items (hairspray, nail polish, etc.) and not household products (dusting spray, Lysol air freshener, Woolite, etc.)? If a resident can safely manage hairspray, why not allow them to also have dusting spray in their possession?

"Instead of a blanket policy that all people who get a dementia diagnosis, regardless of how early it is caught or how the condition is responding to medications, should automatically lose the ability to have a bathroom air freshener or dusting spray, CALA recommends that the same safeguards in place to enable competent residents to manage their personal grooming items to be applied to common household products. (CALA)

Response:

The Department appreciates this comment, but disagrees that language needs to be amended. Section 87724(f)(2) is consistent with Section 87692, which specifies that disinfectants, cleaning solutions, poisons, firearms and other items that could pose a danger if readily available to residents shall be stored where inaccessible to residents. For example, if a resident has a roommate who has dementia or a resident with dementia can wander into other residents' rooms, then the items specified in Section 87692 could pose a danger and must be stored inaccessible. It is not the intent of the regulation to deny residents, including those diagnosed as mild cognitively impaired, the **use** of cleaning supplies and similar products; however, the storage and

accessibility of those products must be limited. In addition, the licensee is responsible for ensuring ongoing assessment of all residents' supervision requirements. The licensee must ensure that any items available for the use of independently functioning individuals do not put other residents at risk. The Department has provided some leeway on this difficult issue, but needs to maintain as much safety as possible for all residents while maximizing their independence.

Comments regarding Section 87724(g) are outside the scope of the 15-day renote changes.

Section 87724(i)

13. Comment:

"Clearly, the legislative intent of the secured perimeter legislation was not to increase the family burden but was to provide a solution for families to have their loved one kept in a safe environment at the least restrictive level of care. Health & Safety Code § 1569.698(a)(5) provides: 'Nothing in this section is intended to prohibit residential care facilities for the elderly from accepting or retaining persons with dementia whose needs can be fully met using care options permitted by existing law and regulations.' The Code further asserts: 'It is not the intent of the legislature to authorize an increase in the level of care provided in a residential care facility for the elderly or to establish a supplemental rate structure based on the services provided in the facility.' (H&S C§ 1569.698(a)(6))

"Prohibiting an authorized representative from acting on a resident's behalf will, in many instances, not only force the family to incur the exorbitant cost of conservatorship proceedings but will also potentially strip individuals of dignity by putting them through the humiliating process of being declared incapacitated. Thus, even those who have planned ahead for eventual incapacity in order to avoid conservatorship will be deprived of their wishes and be forced through a system they did everything possible to avoid. The other alternative will be for facilities to have their files filled with signed statements of voluntary entry by individuals who, by the very fact of needing to be in a secured perimeter facility, probably lack the capacity to know what they have signed. We do not think such policy lends itself to either the protection not the best interest of this vulnerable population.

"The Department has responded that 'A Curable Power of Attorney for Health Care pertains to medical decisions and does not give authority to make decisions concerning personal rights.' We would respectfully assert that this is not a totally accurate understanding of the law. In fact, Probate Code § 4671(b) specifically states 'The principal in a power of attorney for health care may grant authority to make decisions relating to the personal care of the principal including, but not limited to, *determining where the principal will live*, providing meals, hiring household employees, providing transportation, handling mail, and arranging recreation and entertainment.

"Furthermore, we would respectfully assert that where any type of egress device is warranted because of wandering, this can be interpreted as a medical decision given the dire health consequences of someone who is known to wander not being adequately safeguarded. In fact, the health consequences were all too obvious in the case of the gentleman who on July 1, 2003, wandered from the Spectrum Care Assisted Living Facility in Yucca Valley. With no personal, door, or perimeter device to deter him or alert staff, he wandered onto a highway and was killed.

"In addition, while the Health Care Decisions Law specifically prohibits the agent from consenting to 'commitment to or placement in a mental treatment facility' (Probate Code § 4652(2)), there is no such specific prohibition mentioned in this section regarding placement in a secured perimeter facility. It would appear that if the Legislature had been concerned about prohibiting the agent to participate in such placement, a similar prohibition would have been made regarding placement in a secured perimeter facility. Surely the Department is not implying that a secured perimeter is the equivalent of 'a mental health treatment facility.'

"22 Cal Code Reg § 87724(D)(5)(6) provides for a resident to safely leave the facility if the resident so desires; thus a secured perimeter is *not* a locked facility in the same manner as a Welfare and Institutions Code § 5150 designated facility. Thus, it is difficult to understand how egress devices worn by the resident should be treated any differently than building egress devices. Clearly in cases where no advance planning has occurred, conservatorship regrettably may be necessary; but in instances where an individual, where still having capacity, executed an advance directive naming an agent to be his or her substitute decisionmaker, it seems extremely overreaching for the Department to demand conservatorship instead. The Association would request a copy of the legal opinion on which this policy is based.

"From our meetings and correspondence it seems apparent that the Department and the Alzheimer's Association have the same goal -- to provide, ensure and protect the well being, health and safety of residents who live with Alzheimer's Disease or related disorders. We urge you to reconsider this one remaining policy as there is much to be gained by the simple addition of 'authorized representative' and much to be lost by eliminating it. The entire body of dementia regulations provides the protections necessary for the resident without the added burden of conservatorship on those who have already planned ahead." (AA)

Response:

The Department appreciates this comment, but disagrees that an "authorized representative" who is not the conservator may consent on a resident's behalf for the resident to wear a wrist band or other egress alert device. Pursuant to Probate Code Section 1801(a), a "conservator of the person" may be appointed by the court for a "person who is unable to provide properly for his or her personal needs." The requirement for resident or conservator approval in amended Section 87724(i) is consistent with Health and Safety Code Section 1569.698(f) as affirmed in current

regulation Section 87724(l)(5) pertaining to locked exterior doors or perimeter fence gates. Egress devices are therefore treated the same as locked doors or gates.

The Department agrees that Probate Code Section 4671(b) provides authority for **personal care decisions** for the principal to be included in a durable power of attorney for health care, but notes that it is unlikely and uncommon, as most powers of attorney are executed on forms that do not include that specific authority. Moreover, residents without capacity to consent to wearing egress devices also lack capacity to sign a power of attorney. (Requirements of legal sufficiency are listed in Probate Code section 4121.) If the Department were to expand consent as suggested, then a cumbersome process would be required for the Department's licensing analysts to verify the specific authority in each and every resident's power of attorney to determine the following:

- Was the power of attorney signed before admission to the facility?
- If only effective upon the incapacity of the resident, was incapacity determined by the primary physician?
- Was the determination of incapacity made prior to admission in the facility?
- Does the power of attorney specifically authorize the agent to make personal care decisions?
- Do personal care decisions include where the resident will live?
- Do personal care decisions include what the resident will wear?

In view of the Department's limited resources and decreased licensing staff, the process would also be burdensome because licensing analysts would need training, and legal review would be needed in each case. On the other hand, court orders of conservatorship of the person generally provide authority for personal care decisions and would not require Department review beyond the court order.

While the current regulation permits a resident's "authorized representative" to give written approval for the resident to use wrist bands and be subject to other egress alert devices, the representative is "authorized" only by virtue of law, i.e., by conservatorship or by explicit provisions in the resident's power of attorney. After amendment of Section 87724(i), in the rare instance where the power of attorney is sufficient, the licensee may request the Department to grant an exception.

On the grounds of confidential attorney/client privilege, the Department declines to provide a copy of its legal opinion on this matter.

Sections 87724(k)(3) and (l)(8)

14. Comment:

"§ 87724(k)(3) and (l)(8) are redundant." (CAHSA)

Response:

Notwithstanding that this comment is outside of the scope of the 15-day renote changes, it should be noted that Section 87724(k) pertains to requirements that must be met for the licensee to utilize delayed egress devices or perimeter fence gates and Section 87724(l) pertains to those for the licensee to lock exterior doors or perimeter fence gates.

Section 87724(k)(5)

15. Comment:

"residents who continue to indicate a desire to leave the facility following redirection shall be permitted to do so with staff supervision.

"Comment: how can a facility permit people who want to leave the facility to go with staff supervision while at the same time maintaining staff ratios; does the staff person who accompanies the individual who insists upon leaving included in the staff ratio requirements?" (CAHSA)

Response:

This comment is outside the scope of the 15-day renote changes. The facility must have a staffing ratio to provide staff supervision for residents who continue to indicate a desire to leave the facility even upon redirection.

Section 87724(k)(6)

16. Comment:

"Without violating § 87572, Personal Rights, facility staff shall ensure the continued safety of residents if they wander away from the facility.

"Comment: if someone wanders away how can their safety be ensured?" (CAHSA)

Response:

This comment is outside the scope of the 15-day renote changes. See responses to Comments 14 and 15.

Section 87724(l)

17. Comment:

"Health and Safety Code 1569.699(b) states: 'Grounds of residential care facilities for the elderly serving persons with Alzheimer's disease or dementia may be fenced, and gates therein equipped with locks, provided safe dispersal areas are located not less

than 50 feet (15240mm) from the buildings. Dispersal areas shall be sized to provide an area of not less than three square feet (0.282) per occupant. Gates shall not be installed across corridors or passageways leading to the dispersal areas unless they comply with the exit requirements of Section 1021 of the California Building Standards Code.'

"Please amend 87724(l) to be in compliance with the Health and Safety Code. Add (9) to read

"(l) The following initial and continuing requirements shall be met for the licensee to lock exterior doors or perimeter fence gates:

"(9) Facilities must comply with Health and Safety Code 1569.699(b).

HANDBOOK BEGINS HERE

"(1) Health and Safety Code 1569.699(b) provides in part:

"Grounds of residential care facilities for the elderly serving persons with Alzheimer's disease or dementia may be fenced, and gates therein equipped with locks, provided safe dispersal areas are located not less than 50 feet (15240mm) from the buildings. Dispersal areas shall be sized to provide an area of not less than three square feet (0.282) per occupant. Gates shall not be installed across corridors or passageways leading to the dispersal areas unless they comply with the exit requirements of Section 1021 of the California Building Standards Code.

HANDBOOK ENDS HERE

"This provision is deeply needed for the fire safety of residents with dementia. It is too often overlooked by LPAs and by fire safety officials." (GORYAN)

Response:

The Department appreciates this comment, but it is outside of the scope of the 15-day renote changes.

Sections 87724(l)(7) and (l)(9)

18. Comment:

"§ 87724(l)(7) and (l)(9) are redundant." (CAHSA)

Response:

This comment is outside the scope of the 15-day renote changes. However, there is no proposed Section 87724(l)(9), but the Department thinks the comment refers to Section 87724(k)(9). See the response to Comment 14.

Section 87725(b)

19. Comment:

“This section is so misleading. It implies that when a facility stops its advertising campaign that residents and Licensing must be notified that the advertising campaign stopped. The intent, I believe, is to notify residents and Licensing when a facility ceases providing dementia care and has, perhaps, surrendered its dementia waiver. The wording, however, does not convey this clearly, and this will lead to more and more appeals and paperwork the LPA must dedicate time to addressing. The section needs to be more specific and clear. Perhaps with the following addition, it will read more clearly:

“(b) Licensees who will discontinue providing dementia care; advertising, promoting, or otherwise holding themselves out as providing special care, programming, and/or environments for residents with dementia or related disorders shall:

“This is more direct and to the point. In the same line of thought, section **87725(b)(1)(A)**, should be amended to read:

“(A) The notification shall state that the licensee will no longer be providing dementia care; advertising or promoting dementia special care, programming, and/or environments; and, therefore, shall no longer be required to meet the requirements specified in Section 87725 and the training requirements in Section 87725.1.”
(GORYAN)

Response:

The Department appreciates this comment, but it is outside of the scope of the 15-day renote changes.

Section 87725.1(a)(1)(A)(2)

20. Comment:

“Dementia care is dementia care. To not allow an employee to transfer his or her training records from one licensed facility to another is a poor regulation. That employee’s fingerprint clearance can be transferred, as can their first aid training. Why not allow employees to also transfer their 6-hour dementia training?

“Please amend the provision to read:

“(A) This orientation shall be repeated if either of the following occur:

- “2. An employee goes to work for another licensee who has not had a dementia waiver for 180 days or more. An employee who has met the training

requirements of 87725.1(a)(1) in a licensed facility may transfer their training by providing evidence of completing the training. The licensee must place a copy of that evidence in the employee's record.” (GORYAN)

Response:

The Department appreciates this comment, but it is outside of the scope of the 15-day renote changes.

Section 87725.1(a)(2)(B)

21. Comment:

"I recommend 87725.1(a)(2)(B) be amended to read:

"Various methods of instruction may be used, including, but not limited to, presenters knowledgeable about dementia; video instruction tapes; interactive materials; books; and/or other materials approved by organizations or individuals specializing in dementia as specified in Section 87725.1(a)(2)(C)." (CRCAC)

Response:

This comment is outside the scope of the 15-day renote changes.

Section 87725.1(a)(2)(E)(2)(i)

22. Comment:

"One of the experience requirements call for 'current employment as a consultant with expertise in dementia care as specified in Section 87725.1 (a)(2)(C).' Since Section 87725.1(a)(2)(C) refers to the development of the training material, the trainer would have had to be employed as a consultant in the development of the particular training materials in order to deliver the training. Under this proposed section, the only people who would be qualified trainers would be RCFE administrators or direct care providers (as specified) or those who are employed to write the trainings. RCFEs may employ a staff person or contract with a consultant who has expertise related to dementia care (gerontologists, psychologists, consultant pharmacists, etc) to conduct trainings, among other things. This provision as written would prevent them from training based on materials developed by the Alzheimer's Association, for example, if he/she wasn't employed as a consultant in the development of those materials.

"CALA recommends that individuals with experience in dementia care and knowledge of the " training topic area be allowed to deliver the training." (CALA)

Response:

This comment erroneously states that the trainer would have to be employed as a consultant “in the development of the training material” in order to deliver the training. The comment implies that a consultant has to write the trainings, which is not true. Section 87725.1(a)(2)(C) specifies that training shall be developed by an individual or organization with expertise in dementia care and with knowledge on the training topics or training shall be developed in consultation with an individual or organization with expertise in dementia care and with knowledge on the training topics. The consultant can review the proposed training, regardless of the source of origin, and provide input. Gerontologists, psychologists etc. may provide the training because they are experts in dementia care and will have met the education requirements. Trainers do not have to develop the training material, but can use material developed by organizations or individuals specified in Section 87725.1(a)(2)(C)1., if they are not already consultants. Regulations cannot address every specific situation. Section 87116, Program Flexibility, allows licensees to request exceptions if the intent of the regulations can be met through alternative means. The Department’s intent is to provide basic requirements that will cover most situations, while not prohibiting qualified trainers or creating financial hardship.

The Department wants to ensure that the criteria for the trainer allows individuals who are consultants to be able to give the training, as well as RCFE administrators or direct care providers. The proposed experience and education requirements must be met to ensure that the trainer is more knowledgeable than the audience. The Department disagrees with adding the suggested language about the trainer because it is too general and specifies that the only requirements are that the trainer has to have experience in dementia care and knowledge on the training topics. The Department requires that specific criteria be met so that information can be verified, and more specific requirements are consistent with Section 87565.

General

23. Comment:

"In conclusion, we wish to voice our grave concerns about the Department's enforcement of current laws and regulations. In light of the facts that are coming to light with respect to the tragic and avoidable death in July at the Spectrum Assisted Living Facility in Yucca Valley, which operates under a dementia waiver, we are concerned about the lack of oversight of facilities providing dementia care. For all of us who have worked diligently to strengthen regulations for these facilities, it saddens us to see these safeguards not being enforced. While we appreciate the State's fiscal situation has impacted the Department's capacity to ensure maximum oversight and regular surveys, we feel the stakes are too high for frail, elderly residents for us not to pursue a solution to this problem." (AA)

Response:

The Department appreciates this comment. In order to ensure the health and safety of all residents, training has been increased and topics have been specified. Moreover, it has been emphasized in Section 87724 that the licensee shall continually observe and reappraise the resident. Timely completion of complaint visits, case management visits, visits to follow-up incident reports, plan of correction visits and processing applications will continue to be priority activities, and will be an essential part of the Department's ongoing efforts to provide protection for residents in care.